

Rules for Tax Appeals

of the

State Board of Equalization

The Board's Rules for Tax Appeals are the hearing procedures applicable to the various tax and fee programs administered by the Board.

2008

Board Proceedings Division

Rules for Tax Appeals of the State Board of Equalization

2008

Table of Contents

Chapter 1: Title of Division.....	1
5000. Statement of Intent; Title of Division.....	1
Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees	2
<i>Article 1: Application of Chapter 2 and Definitions</i>	<i>2</i>
5200. Application of Chapter 2 and Definitions.....	2
5201. Application of the International Fuel Tax Agreement.....	2
5202. Notice Requirements.....	3
<i>Article 2A: Petitioning Notices of Determination and Notices of Deficiency Assessment</i>	<i>3</i>
5210. Persons Who May File Petitions for Redetermination.	3
5210.5. Successor's Petition for Reconsideration.	4
5211. Limitation Period for Filing Petitions and Stay of Collection Activities.	4
5212. Contents of Petitions for Redetermination, and Supporting Arguments and Evidence.....	4
5212.5. Amendments to Petitions for Redetermination.	5
5213. Accrual of Interest.	5
5214. Additional Copy of Petitions for Redetermination Filed Under the Tax on Insurers Law.....	5
5215. Scope of Petitions for Redetermination Filed Under Hazardous Substances Tax Law.....	5
5215.4. Scope of Petitions for Redetermination Filed Under Covered Electronic Waste Recycling Fee.....	6
5215.6. Scope of Petition for Redetermination Filed Under Water Rights Fee Law.	6
5216. Filing Petitions for Redetermination.....	6
5217. Assignment and Acknowledgment of Petitions for Redetermination.	7
5218. Review of the Petition by the Assigned Section.	8
5219. Mailing the Summary Analysis and Scheduling the Appeals Conference.	8
<i>Article 2B: Treatment of Premature or Untimely Petition as an Administrative Protest.....</i>	<i>8</i>
5220. Premature or Untimely Petition May Be Treated as an Administrative Protest.....	8
5220.4. Accrual of Interest.	9
5220.6. No Stay of Collection Activities.....	9
<i>Article 2C: Contesting a Jeopardy Determination.....</i>	<i>9</i>
5221. Notice of Jeopardy Determination.	9
5222. Persons Who May File a Petition for Redetermination of a Jeopardy Determination.	9
5222.4. Contents of Petition for Redetermination of Jeopardy Determination.....	10
5222.6. Limitation Period for Petition for Redetermination of Jeopardy Determination.	10

5223.	Security Requirement for Petition.....	10
5224.	Review of Petition for Redetermination of Jeopardy Determination.	10
5225.	Persons Who May File an Application for Administrative Hearing; Manner of Filing; and Consolidation with Petition.	11
5226.	Limitation Period for Filing Application for Administrative Hearing.	11
5227.	Contents of Application for Administrative Hearing.	12
5228.	Option to Post Security with Application for Administrative Hearing.	12
5229.	Assignment of Application for Administrative Hearing to Appeals Division for Appeals Conference.	12
<i>Article 3: Claims for Refund.....</i>		<i>13</i>
5230.	Persons Who May File a Claim for Refund; Limitations on Certain Claims.	13
5231.	Limitation Period for Claim for Refund.....	14
5231.5.	Failure to File Timely Claim for Refund.	16
5232.	General Contents of Claims for Refund.....	16
5232.4.	Contents of Claims for Refund Under Diesel Fuel Tax Law.	17
5232.6.	Requirements for Claims for Refund Regarding Lost, Unmarketable or Condemned Alcoholic Beverages.	18
5232.8.	Additional Requirements for Claims for Refund Filed under the Cigarette and Tobacco Products Tax Law.	18
5233.	Filing Claims for Refund.	18
5234.	Assignment and Acknowledgment of Claim for Refund.....	19
5234.5.	Review Process for Claims for Refund and Requests for Additional Information.	20
5235.	Action on the Claim for Refund.....	20
5236.	Discretion to Grant or Deny Appeals Conferences and Oral Hearings on Claims for Refund.....	21
5237.	Board Approval Required for Refunds Over \$50,000.	21
5238.	Credits and Offsets May Reduce Refunds.	22
5239.	Combined Claims for Refund on Behalf of Class of Taxpayers.....	22
<i>Article 4A: Requests for Innocent Spouse Relief Under the Sales and Use Tax Law.....</i>		<i>23</i>
5240.	Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief (Sales and Use Tax, including State-Administered Local Sales, Transactions, and Use Taxes).....	23
5241.	Acknowledgement and Review of Requests for Innocent Spouse Relief.	24
5242.	Requests for Reconsideration by the Board.	24
<i>Article 4B: Successor's Request for Relief of Penalty Under the Sales and Use Tax Law.....</i>		<i>25</i>
5243.	Successor's Request for Relief.	25
<i>Article 4C: Other Requests for Relief of Penalties and Interest.....</i>		<i>25</i>
5244.	No Independent Right to Oral Board Hearing on a Request for Relief; Applicable Procedures for Requests Included in Petitions or Claims; and Association with Related Petitions or Claims.	25
5245.	Authority to Grant Relief for Reasonable Cause and Contents of Requests for Relief for Reasonable Cause.....	25
5246.	Authority to Grant Relief Due to Unreasonable Error or Delay and Contents of Requests for Relief Due to Unreasonable Error or Delay.	26
5247.	Authority to Grant Relief Due to Reasonable Reliance on Written Advice and Contents of Requests for Relief Due to Reasonable Reliance on Written Advice.	27

5248.	Authority to Grant Relief Due to Disaster and Contents of Requests for Relief Due to Disaster.....	28
5249.	Filing Requests for Relief.	29
5249.4.	Assignment and Acknowledgement of Requests for Relief.	29
5249.6.	Reviewing Requests for Relief.	30
<i>Article 5: Claims (Inquiries) of Incorrect or Non-Distribution of Local and District Taxes.....</i>		<i>30</i>
5250.	Filing and Reviewing Claims and Inquiries Regarding Incorrect or Non-Distribution of Local and District Taxes.	30
<i>Article 6: Appeals Conferences</i>		<i>31</i>
5260.	Referral to Appeals Division for Appeals Conference; Preferred Location for Appeals Conference.	31
5261.	Notice of Appeals Conference: Response to Notice of Appeals Conference; Submission of Additional Arguments and Evidence; Recording Appeals Conferences.	31
5262.	Requests to Reschedule or Postpone Appeals Conferences.	32
5263.	Ways to Expedite an Appeals Conference.	33
5264.	Conducting the Appeals Conference; Parties to the Appeals Conference; Nature of the Appeals Conference; Failure to Appear.....	34
5265.	Issuance and Contents of a Decision and Recommendation.	34
5266.	Appeals Staff Recommendations; Requests for Reconsideration; Requests for Oral Hearings.	35
5267.	Issuance of Post Appeals Conference Notices.....	37
5268.	Procedures for Conducting Board Hearings.	37
<i>Article 7: Optional Briefs for Board Hearings.....</i>		<i>38</i>
5270.	Requirements for Briefs; Briefing Schedule; Non-Party Briefs; Additional Briefing.....	38
5271.	Extensions of Time for Filing Briefs.	40
Chapter 3: Property Taxes		41
<i>Article 1: Application of Chapter and Definitions</i>		<i>41</i>
5310.	Application of Chapter.	41
5311.	Definitions.....	41
5312.	Application of Articles 2, 3, and 4.	43
<i>Article 2: Petitions for Reassessment of State-Assessed Property and Private Railroad Cars</i>		<i>43</i>
Subarticle 1: Application of Article.....		43
5321.	Application of Article.....	43
Subarticle 2: Assessments and Assessment Factor Hearings.....		44
5322.	Information Available to Assesseees; Assessment Factor Hearings.....	44
5322.5.	Validity of Assessment.	44
Subarticle 3: Contents of Petitions and Filing Deadlines.....		44
5323.	Time for Filing of Petitions.....	44
5323.2.	Filing Requirements and Procedures for Contesting Private Railroad Car Jeopardy Assessments.	45
5323.4.	Contents of the Petition.	45
5323.6.	Submission of Petition.	46
5323.8.	Duplicate Petitions.....	46

Subarticle 4: Timeliness, Acceptance, and Dismissal of Petitions	47
5324. Timeliness of Petition.	47
5324.2. Extensions of Time.	47
5324.4. Accepting or Rejecting a Petition.	47
5324.6. Submission of Additional Supporting Documents by Petitioner.	48
5324.8. Dismissal of Petition.	48
Subarticle 5: Prehearing Meetings and Review of Petitions	48
5325. Prehearing Meeting and Exchange of Information Between State-Assessed Properties Division, Tax and Fee Programs Division, and Petitioner.	48
5325.4. Petitions Resolved Before Appeals Division Review.	48
5325.6. Prehearing Review of All Other Petitions.	49
Subarticle 6: Briefing Schedules and Appeals Conferences	49
5326. General Briefing Procedures For Petitions Reviewed by the Appeals Division.	49
5326.2. Briefing Schedule If No Appeals Conference Is Scheduled.	49
5326.4. General Appeals Conference Procedures.	50
5326.6. Scheduling of Appeals Conference; Briefing Schedule for Petitions for Which an Appeals Conference is Scheduled.	51
Subarticle 7: Preparing Summaries, Scheduling Hearings, and Distributing Documents	51
5327. Appeals Division Hearing Summary or Summary Decision.	51
5327.4. Oral Hearings – Scheduling of Hearings.	51
5327.6. Distribution of Documents.	52
Subarticle 8: Consolidation and Withdrawal of Petitions	52
5328. Consolidation of Petitions into a Single Hearing.	52
5328.5. Withdrawal of a Petition.	52
Article 3: Other Property Tax Petitions	53
Subarticle 1: Application of Article.	53
5331. Application of Article.	53
Subarticle 2: Appeal of Assessment of Publicly-Owned Property – Contents of Applications, Filing Deadlines, and Board-Appraised Property	53
5332. Time of Filing of Application.	53
5332.4. Contents of Application.	53
5332.6. Submission of Application and Board-Appraised Property.	54
Subarticle 3: Contents of Property Tax Welfare and Veterans’ Organization Exemption Petitions and Filing Deadlines	54
5333. Time for Filing of Petitions.	54
5333.4. Contents of Petition.	54
5333.6. Submission of Petition.	55
Subarticle 4: Contents of Property Tax Sampling Program Petitions and Filing Deadlines	55
5334. Time for Filing of Petitions.	55
5334.4. Contents of the Petition.	55
5334.6. Submission of Petition.	56
Subarticle 5: Filing and Distribution of Petitions, Briefs, and Other Documents	56
5335. Submission of Petitions, Briefs, and Related Documents.	56
5335.4. Timely Performance; Mailing Date.	56
5335.6. Distribution of Documents.	56

Subarticle 6: Accepting, Rejecting, and Perfecting Petitions and Applications.....	56
5336. Accepting or Rejecting a Petition.....	56
5336.5. Perfecting a Petition.	57
Subarticle 7: Prehearing Meetings and Briefing Schedules	57
5337. Prehearing Meeting and Exchange of Information Between Respondent and Petitioner	57
5337.4. Briefing: General Requirements	58
5337.6. General Briefing Schedule.....	59
Subarticle 8: Appeals Division Review, Prehearing Conferences, and Summaries	60
5338. Appeals Division Review.	60
5338.4. Appeals Conference.....	60
5338.6. Preparing and Revising Hearing Summaries.....	61
<i>Article 4: General Board Hearing and Notice Procedures</i>	<i>61</i>
5340. Relation to General Board Hearing Procedures.	61
5341. Additional Briefing.	61
5342. Notice of Hearing.....	62
5343. Submission for Decision Without Oral Hearing.....	62
5344. Notice of Board Decisions.	62
5345. Finality of Board Action; Written Findings and Decision.	63
Chapter 4: Appeals from Actions of the Franchise Tax Board	64
<i>Article 1: Application of Chapter 4, Definitions, and Jurisdiction.....</i>	<i>64</i>
5410. Application of Chapter 4.	64
5411. Definitions.....	64
5412. Jurisdiction.	64
<i>Article 2: How to File an Appeal From the Franchise Tax Board.....</i>	<i>65</i>
5420. Appeal Filing Requirements.	65
5421. Methods for Delivery of Written Documents and Correspondence.....	66
5422. Time for Filing an Appeal.....	67
5423. Accepting or Rejecting an Appeal.	68
5424. Perfecting an Appeal.	68
<i>Article 3: Briefing Schedules and Procedures</i>	<i>69</i>
5430. General Requirements.	69
5431. General Briefing Schedule.....	70
5432. Briefing Schedule for Innocent Spouse Appeals.	70
5435. Additional Briefing.	73
<i>Article 4: Requesting and Scheduling Oral Hearings</i>	<i>73</i>
5440. Right to Request an Oral Hearing.	73
5441. Submission for Decision Without Oral Hearing.....	74
5442. Appeals Review; Scheduling the Oral Hearing.....	74
5443. Pre-hearing Conference.	74
5444. Hearing Summary.	75
<i>Article 5: Decisions, Opinions, and Frivolous Appeal Penalties</i>	<i>75</i>
5450. Letter Decisions.....	75

5451.	Summary Decisions.	76
5452.	Formal Opinions.	76
5454.	Frivolous Appeal Penalty.	77
<i>Article 6: Petitions for Rehearing and Rehearings</i>		78
5460.	Finality of Decision.	78
5461.	Petitions for Rehearing.	78
5462.	Briefing on Petition for Rehearing.	79
5463.	Decisions on Petitions for Rehearing.	79
5464.	Briefing on Rehearing.	80
5465.	Decision on Rehearing.	80
Chapter 5: General Board Hearing Procedures		82
<i>Article 1: Application of Chapter and Definitions</i>		82
5510.	General Application of Chapter 5.	82
5511.	Definitions.	83
5512.	Construction.	85
<i>Article 2: Requirements for Scheduling Board Meetings and Hearings</i>		86
Subarticle 1. Meeting Calendars		86
5521.	Monthly Board Meetings.	86
5521.5.	Adoption of Board Meeting Calendar.	86
Subarticle 2. Requesting and Scheduling an Oral Hearing		87
5522.	Right to Request an Oral Hearing.	87
5522.2.	Acknowledgement of Request for Oral Hearing.	87
5522.4.	Consolidation for Hearing or Decision.	88
5522.6.	Notice of Board Hearing and Response.	89
5522.8.	Dismissal, Deferral, and Postponement.	90
Subarticle 3. Representation, Prehearing Documents, and Preparation for Hearing		91
5523.	Representation at Hearings.	91
5523.1.	Power of Attorney.	92
5523.2.	Contribution Disclosure Forms.	93
5523.3.	Hearing Summary.	93
5523.4.	Additional Briefing.	94
5523.5.	Preparation for Board Hearing and Subpoenas.	95
5523.6.	Presentation of Evidence or Exhibits.	96
5523.7.	Witnesses.	96
5523.8.	Communications with Board Members.	97
<i>Article 3: Public Notification of Board Meeting</i>		97
5530.	Public Agenda Notice.	97
<i>Article 4: Conduct of the Board Meeting and Burden of Proof</i>		98
5540.	Conduct of the Board Meeting.	98
5541.	Burden of Proof.	98
<i>Article 5: Voting and Decisions</i>		98
5550.	Quorum.	98

5551. Voting and Decisions.....	99
<i>Article 6: Post Hearing Notices and Petitions for Rehearing</i>	<i>100</i>
5560. Notice of Board Decision.	100
5561. Petition for Rehearing.....	100
5562. Recommendation on Petition for Rehearing.....	101
5563. Rehearings.	102
<i>Article 7: Correspondence, Public Hearing Records, and Copies</i>	<i>102</i>
5570. Mailing Address.....	102
5571. Timeliness of Documents.	103
5572. Hearing Record.	103
5573. Waiver of Confidentiality.....	104
5574. Request for Portion of Oral Hearing Conducted During Closed Session.....	105
5575. Privilege.....	107
5576. Fees: Filing, Transcripts, and Copies.	107
Chapter 6: Taxpayer Bill of Rights Reimbursement Claims	108
5600. Definitions, Board Hearing Procedures; Taxes Affected by this Article.	108
5601. Eligible Claims.....	109
5602. Reasonable Fees.	110
5603. Claim Procedure.....	110
5604. Oral Hearing on Reimbursement Claim.....	111
5605. Notice of Decision.	111
5700. Annotations.	111

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals

Chapter 1: Title of Division

5000. STATEMENT OF INTENT; TITLE OF DIVISION.

In fulfillment of its constitutional and statutory duties, the State Board of Equalization hereby promulgates this division to provide regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board. These regulations shall be known as the *Board of Equalization Rules for Tax Appeals* (RTA). It is the intent of the State Board of Equalization that these regulations specifically address public concerns regarding its administrative and appellate review processes and improve the relationship between tax and fee payers and the State Board of Equalization.

Note: Authority cited: Article XIII, section 11 of the California Constitution; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Article XIII, section 11 of the California Constitution; Government Code section 15606; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601; Public Resources Code sections 42464.2, 42882.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

■ ■ ■

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals
Chapter 2: Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees

ARTICLE 1: APPLICATION OF CHAPTER 2 AND DEFINITIONS

5200. APPLICATION OF CHAPTER 2 AND DEFINITIONS.

This chapter applies to petitions for redetermination, administrative protests, applications for administrative hearings, claims for refund, and requests for relief filed with the Board under the:

- (a) Sales and Use Tax Law. Part 1 of division 2 of the Revenue and Taxation Code.
- (b) Motor Vehicle Fuel Tax Law. Part 2 of division 2 of the Revenue and Taxation Code.
- (c) Use Fuel Tax Law. Part 3 of division 2 of the Revenue and Taxation Code.
- (d) Tax on Insurers Law. Part 7 of division 2 of the Revenue and Taxation Code.
- (e) Cigarette and Tobacco Products Tax Law. Part 13 of division 2 of the Revenue and Taxation Code.
- (f) Alcoholic Beverage Tax Law. Part 14 of division 2 of the Revenue and Taxation Code.
- (g) Timber Yield Tax Law. Part 18.5 of division 2 of the Revenue and Taxation Code.
- (h) Energy Resources Surcharge Law. Part 19 of division 2 of the Revenue and Taxation Code.
- (i) Emergency Telephone Users Surcharge Law. Part 20 of division 2 of the Revenue and Taxation Code.
- (j) Hazardous Substances Tax Law, which is also applicable to the Childhood Lead Poisoning Prevention Fee and Occupational Lead Poisoning Prevention Fee. Part 22 of division 2 of the Revenue and Taxation Code.
- (k) Integrated Waste Management Fee Law. Part 23 of division 2 of the Revenue and Taxation Code.
- (l) Oil Spill Response, Prevention, and Administration Fees Law. Part 24 of division 2 of the Revenue and Taxation Code.
- (m) Underground Storage Tank Maintenance Fee Law. Part 26 of division 2 of the Revenue and Taxation Code.
- (n) Fee Collection Procedures Law. Part 30 of division 2 of the Revenue and Taxation Code.
- (o) Diesel Fuel Tax Law. Part 31 of division 2 of the Revenue and Taxation Code.

The definitions in sections 5511 and 5512 of this division apply to this chapter. Where section 5511 conflicts with this chapter, this chapter controls.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5201. APPLICATION OF THE INTERNATIONAL FUEL TAX AGREEMENT.

To the extent that sections in this chapter conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement control.

Note: Authority cited: Government Code section 15606(a); Health and Safety Code sections 105190, 105310; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, 60601; Public Utilities Code section 893. Reference: Revenue and Taxation Code sections 6561, 6814,

6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5202. NOTICE REQUIREMENTS.

Any notice given under this chapter must be served personally or by mail in the manner prescribed by statute for service of notice of a deficiency determination.

Note: Authority cited: Government Code section 15606(a); Health and Safety Code sections 105190, 105310; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301, 60601; Public Utilities Code section 893. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 11352, 30243.5, 32313, 38434, 43352, 45353, 46303, 50120.3, 55103, 60333.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 2A: PETITIONING NOTICES OF DETERMINATION AND NOTICES OF DEFICIENCY ASSESSMENT

5210. PERSONS WHO MAY FILE PETITIONS FOR REDETERMINATION.

(a) Any person, supplier, distributor, insurer, surplus line broker, user, or tax or fee payer against whom a notice of determination or notice of deficiency assessment is issued, or a representative who requested a notice of determination pursuant to Revenue and Taxation Code sections 7675.1, 8782.1, or 60316, that disagrees with any item included in the notice of determination or notice of deficiency assessment (except an item described in section 5215.6) may file a petition for redetermination requesting that the Board reconsider the notice of determination or notice of deficiency assessment.

(b) Any person directly interested in a notice of determination issued against a person described in subdivision (a) may file a petition for redetermination requesting that the Board reconsider the notice of determination, but only if the notice of determination was issued under one of the following sections of the Revenue and Taxation Code:

- (1) Sales and Use Tax Law. Sections 6481 or 6511.
- (2) Alcoholic Beverage Tax Law. Sections 32271 or 32291.
- (3) Timber Yield Tax Law. Sections 38416 and 38425.
- (4) Hazardous Substances Tax Law. Section 43201.
- (5) Integrated Waste Management Fee Law. Section 45201.
- (6) Oil Spill Response, Prevention, and Administration Fees Law. Sections 46201 or 46251.
- (7) Underground Storage Tank Maintenance Fee Law. Section 50113.
- (8) Fee Collection Procedures Law. Section 55061.

A person is directly interested in a notice of determination if the person would have an interest in the subject matter of potential litigation involving the determination that would permit the person to intervene in such potential litigation under Code of Civil Procedure section 387, subdivision (b). Such persons include, without limitation, predecessors, successors, receivers, trustees, executors, administrators, assignees, and guarantors. A person directly interested does not include a consumer who owes or has paid tax reimbursement to a retailer, or persons such as lienholders.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6561, 7710, 8851, 12428, 30175, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5210.5. SUCCESSOR'S PETITION FOR RECONSIDERATION.

A successor served with a notice of successor liability under Revenue and Taxation Code sections 6814, 9024, 38564, 46454, or 60474 may file a petition for reconsideration of successor liability in the manner provided in this article for petitioning any other liability imposed under the Sales and Use Tax Law, Use Fuel Tax Law, Timber Yield Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, or Diesel Fuel Tax Law, respectively.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6814, 9024, 38564, 46454, 60474.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5211. LIMITATION PERIOD FOR FILING PETITIONS AND STAY OF COLLECTION ACTIVITIES.

(a) A petition for redetermination must be filed within 30 days from the date that the notice of determination or notice of deficiency assessment was mailed to the person, supplier, distributor, insurer, surplus line broker, user, or tax or fee payer against which the notice was issued.

(b) Notwithstanding subdivision (a), petitions for redetermination of determinations issued under Revenue and Taxation Code section 30173 (Cigarette and Tobacco Products Tax Law) must be filed within 10 days from the date that the notice of determination was mailed to the distributor.

(c) A determination contained within a notice of determination or notice of deficiency assessment becomes final if a petition for redetermination is not filed within the time periods provided for in subdivisions (a) and (b).

(d) A petition for redetermination is premature and not valid if it is filed before a notice of determination, notice of deficiency assessment, or notice of successor liability is issued. However, a premature petition for redetermination may be treated as an administrative protest under section 5220.

(e) The filing of a timely petition for redetermination will stay collection activities with regard to amounts contained in the notice of determination or notice of deficiency assessment being petitioned, until after the petition has been acted upon and the action becomes final.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6561, 7710, 8851, 12428, 30174, 30175, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5212. CONTENTS OF PETITIONS FOR REDETERMINATION, AND SUPPORTING ARGUMENTS AND EVIDENCE.

(a) Every petition for redetermination must:

(1) Be in writing.

(2) Identify the amounts the petitioner wishes to contest (petitioners may contest all or a portion of the amount shown on a notice), if known.

(3) State the specific grounds or reasons why the notice of determination or notice of deficiency assessment should be reconsidered.

(4) Be signed by the petitioner or the petitioner's authorized representative.

(b) A petition for redetermination may include a request for an appeals conference conducted under article 6 of this chapter, a request for an oral hearing before the Board, or both. If a petition for redetermination only includes a request for an appeals conference, an oral hearing before the Board may still be requested in accordance with section 5266.

(c) The filing of a completed form provided by the Board for use as a petition for redetermination will satisfy the requirements of subdivision (a).

(d) A petitioner may submit copies of any supporting written arguments or documentary evidence along with its petition for redetermination.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38442, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6561.5, 7710.5, 8851.5, 12428, 30261.5, 32301.5, 38442, 40092, 41086, 43302, 45302, 46352, 50115, 55082, 60351.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5212.5. AMENDMENTS TO PETITIONS FOR REDETERMINATION.

A petition for redetermination may be amended to state additional grounds or reasons why the notice of determination or notice of deficiency assessment should be reconsidered at any time prior to the date on which the Board issues its order or decision upon the petition for redetermination.

Note: Authority cited: Government Code section 15606, Government Code; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6561.5, 7710.5, 8851.5, 12428, 30261.5, 32301.5, 38442, 40092, 41086, 43302, 45302, 46352, 50115, 55082, 60351.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5213. ACCRUAL OF INTEREST.

The filing of a petition for redetermination does not stop the accrual of interest.

Note: Authority cited: Government Code section 15606, Government; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6482, 6513, 7674, 7661, 8777, 8803, 12632, 30171, 30202, 30223, 32271, 32291, 38412, 38423, 40072, 40083, 41071, 41082, 43201, 45201, 46201, 46253, 50113, 55061, 60302, 60314.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5214. ADDITIONAL COPY OF PETITIONS FOR REDETERMINATION FILED UNDER THE TAX ON INSURERS LAW.

An insurer or surplus line broker filing a petition for redetermination of a deficiency assessment issued under the Tax on Insurers Law must file a copy of its petition with the Commissioner of Insurance, c/o Premium Tax Audit Bureau, at the same time it files its petition for redetermination in accordance with section 5216.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code section 12428.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5215. SCOPE OF PETITIONS FOR REDETERMINATION FILED UNDER HAZARDOUS SUBSTANCES TAX LAW.

(a) Hazardous or Extremely Hazardous Waste. All petitions for redetermination filed under Revenue and Taxation Code section 43301 will be acknowledged. However, no determination will be made as to whether any substance is a hazardous or extremely hazardous waste. A petition for redetermination based upon such grounds will be forwarded to the Director of Toxic Substances Control for determination in accordance with Revenue and Taxation Code section 43301, and may not be considered until after the Director of Toxic Substances Control has made his or her determination.

(b) Childhood Lead Poisoning Prevention Fee.

(1) A petition for redetermination of the Childhood Lead Poisoning Prevention Fee may be founded upon any grounds, including such grounds as:

(A) The petitioner's industry did not contribute in any manner to environmental lead contamination;

(B) The petitioner's lead or lead containing product does not currently or did not historically result in quantifiable persistent lead contamination; or

(C) The amount of the fee assessed does not reflect the petitioner's market share or is incorrectly computed.

(2) A petition founded upon grounds described in subparagraphs (A), (B), or (C) of paragraph (1) will not be acted upon until after the State Director of Health Services has acted upon the petitioner's application for exemption from the fee or reassessment of the fee. Applications for exemption should be submitted to the State Department of Health Care Services in the manner provided in California Code of Regulations, title 17, section 33040. Applications for reassessment should be submitted to the State Department of Health Services in the manner provided in California Code of Regulations, title 17, section 33050.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43301, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code section 43301; Health and Safety Code section 105310.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5215.4. SCOPE OF PETITIONS FOR REDETERMINATION FILED UNDER COVERED ELECTRONIC WASTE RECYCLING FEE.

All petitions for redetermination of the Covered Electronic Waste Recycling Fee filed in accordance with section 5216 will be acknowledged. However, no determination will be made as to whether an item is or is not a covered electronic device. A petition for redetermination based upon such grounds will be forwarded to the Department of Toxic Substances Control for determination in accordance with Public Resources Code section 42464.6.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Public Resources Code section 42464.6.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5215.6. SCOPE OF PETITION FOR REDETERMINATION FILED UNDER WATER RIGHTS FEE LAW.

Under Water Code section 1537, a petition for redetermination under the Fee Collection Procedures Law should be filed with the State Water Resources Board if the petition requests reconsideration of a determination by the State Water Resources Control Board regarding the amount of the water rights fee or that a person or entity is required to pay such fee.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Water Code section 1537.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5216. FILING PETITIONS FOR REDETERMINATION.

(a) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of petitions and related documents. A petition or related document may be filed electronically under this section if an electronic copy of such document is transmitted to the appropriate section or group identified in subdivision (b) for the tax or fee law at issue in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(b) Petitions for redetermination and related documents may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the address provided below for the particular tax or fee law at issue:

(1) Sales and Use Tax Law.

Petitions Section, MIC: 38
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0038

(2) Hazardous Substances Tax Law (Except Childhood Lead Poisoning Prevention Fee), Occupational Lead Poisoning Prevention Fee, Water Rights Fee, Covered Electronic Waste Recycling Fee, Tire Recycling Fee, Integrated Waste Management Fee, and Marine Invasive Species Fee Collection Law

Environmental Fees Division, MIC: 57
Audit Unit
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0057

(3) Tax on Insurers Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge, and Natural Gas Surcharge.

Excise Taxes Division, MIC: 56
Refund and Petition Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0056

(4) Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Diesel Fuel Tax Law, and Childhood Lead Poisoning Prevention Fee.

Fuel Tax Division, MIC: 30
Petition Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0030

(5) Timber Yield Tax Law.

Timber Yield Tax Section, MIC: 60
State Board of Equalization
P. O. Box 942879
Sacramento, CA 94279-0060

(c) The Chief of Board Proceedings may reject any petition for redetermination or related document filed in any manner that is not authorized by this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6561, 6814, 7710, 8851, 12428, 30175, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. In subdivision (b)(2), changed a period to a comma after word fee in Integrated Waste Management Fee. Adopted 5-28-08; Effective 7-16-08.

5217. ASSIGNMENT AND ACKNOWLEDGMENT OF PETITIONS FOR REDETERMINATION.

(a) After receipt, a petition for redetermination will be assigned to the appropriate section or group listed in section 5216 based upon the type of tax or fee at issue.

(b) Once a petition for redetermination is assigned, Board Staff from the assigned section or group will promptly send the petitioner a letter acknowledging receipt of the petition for redetermination, which will contain the contact information for the assigned section or group.

(c) If necessary, the acknowledgement letter may request additional documentary evidence to support the petition for redetermination.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5218. REVIEW OF THE PETITION BY THE ASSIGNED SECTION.

- (a) Initial Review of Petition. Board Staff from the assigned section must review the petition, notice of determination, and any other relevant information.
- (b) Referral to District Office or Board Section. Board Staff from the assigned section may refer the petition to Board Staff in the district office or Board Section that issued the notice being petitioned for further investigation and comment.
- (c) Scope of Review. Board Staff from the assigned section must look for consistency, adequacy of procedures, proper application of law, and consideration of any recent law changes or Board Memorandum Opinions that may affect the audit or investigation findings, where appropriate.
- (d) Findings. Upon completion of the review, Board Staff from the assigned section must present its findings to the petitioner.
- (e) Agreement or Disagreement. If the petitioner agrees with the Board staff's findings, or fails to request an appeals conference and/or oral hearing, a notice of redetermination will be issued in accordance with such findings. If the petitioner disagrees with any portion of Board staff's findings, and indicates that disagreement by requesting an appeals conference conducted under article 6 of this chapter, or by requesting or confirming a previous request for an oral hearing, Board Staff from the assigned section must prepare a summary analysis.
- (f) The summary analysis is a written summary of the petitioner's contentions regarding the notice of determination or notice of deficiency assessment, the position of the Department that issued the notice, and the reasons Board Staff from the assigned section believes that the Department's position should be sustained in whole or in part.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5219. MAILING THE SUMMARY ANALYSIS AND SCHEDULING THE APPEALS CONFERENCE.

Once the summary analysis is completed, Board Staff from the assigned section or group will forward the petition file to the Board Proceedings Division and mail a copy of the summary analysis to the petitioner. An appeals conference will then be scheduled in accordance with article 6 of this chapter.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6562, 7711, 8852, 12429, 30175, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

**ARTICLE 2B: TREATMENT OF PREMATURE OR UNTIMELY PETITION
AS AN ADMINISTRATIVE PROTEST**

5220. PREMATURE OR UNTIMELY PETITION MAY BE TREATED AS AN ADMINISTRATIVE PROTEST.

- (a) If a petition for redetermination is filed prior to or after the expiration of the applicable time periods provided for in section 5211, the premature or untimely petition may be treated as an administrative protest when determined by the Deputy Director of the Department that issued the petitioned notice. Board Staff shall advise persons filing premature petitions to file timely petitions.
- (b) If a premature or untimely petition is treated as an administrative protest, the administrative protest will be reviewed in the same manner as a petition for redetermination.
- (c) Notwithstanding subdivision (b) of this section:
 - (1) A request for an appeals conference conducted under article 6 of this chapter may be denied on an administrative protest, however, such requests will be liberally granted; and

(2) A request for an oral hearing before the Board may be denied on an administrative protest, however, such requests will be liberally granted.

(d) A claim for refund should be filed for each payment made on an administrative protest.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6981, 8191, 9196, 12951, 30421, 32440, 38631, 40121, 41107, 43491, 45801, 46551, 50151, 55281, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5220.4. ACCRUAL OF INTEREST.

The treatment of a premature or untimely petition for redetermination as an administrative protest does not stop the accrual of interest.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6482, 6513, 7674, 7661, 8777, 8803, 12632, 30171, 30202, 30223, 32271, 32291, 38412, 38423, 40072, 40083, 41071, 41082, 43201, 45201, 46201, 46253, 50113, 55061, 60302, 60314.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5220.6. NO STAY OF COLLECTION ACTIVITIES.

In general, the treatment of a premature or untimely petition for redetermination as an administrative protest does not stay efforts to collect any unpaid amounts at issue in the administrative protest. This is because the amounts contained in the notice of determination or notice of deficiency assessment being protested became final and collectible when the time to file a timely petition for redetermination expired.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6561, 7710, 8851, 12428, 30174, 30261, 32301, 38441, 40091, 41085, 43301, 45301, 46351, 50114, 55081, 60350.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 2C: CONTESTING A JEOPARDY DETERMINATION

5221. NOTICE OF JEOPARDY DETERMINATION.

(a) If the collection of any tax or fee or any amount of tax or fee required to be collected and paid to the state, or of any determination or other amount required to be paid to the state will be jeopardized by delay, a notice of jeopardy determination may be issued.

(b) The notice of jeopardy determination shall state the tax or fee, or amount of tax or fee required to be collected or other amount.

(c) The amounts stated in the notice of jeopardy determination are immediately due and payable.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6536, 7698, 8826, 30241, 32311, 38431, 43350, 45351, 46301, 50120.1, 55101, 60330.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5222. PERSONS WHO MAY FILE A PETITION FOR REDETERMINATION OF A JEOPARDY DETERMINATION.

(a) The person against whom a jeopardy determination is made or the person's authorized representative may file a petition for redetermination of the jeopardy determination and related documents.

(b) The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) to file petitions for redetermination and related documents. A petition for redetermination of a jeopardy determination or related document may be filed electronically if an electronic copy of such document is transmitted to the appropriate section identified in the notice of jeopardy determination in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(c) A petition for redetermination of a jeopardy determination and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the address provided on the notice of jeopardy determination. The Chief of Board Proceedings may reject any petition for redetermination of a jeopardy determination or related document filed in any manner that is not authorized by this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5222.4. CONTENTS OF PETITION FOR REDETERMINATION OF JEOPARDY DETERMINATION.

A petition for redetermination of a jeopardy determination must satisfy all the requirements for a petition for redetermination as provided in article 2A of this chapter.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5222.6. LIMITATION PERIOD FOR PETITION FOR REDETERMINATION OF JEOPARDY DETERMINATION.

(a) A petition for redetermination of a jeopardy determination must be filed within the earlier of 10 days from the date that the notice of jeopardy determination was mailed or personally served.

(b) The provisions of article 2A of this chapter do not apply to the time period in which to file a petition for redetermination of a jeopardy determination.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5223. SECURITY REQUIREMENT FOR PETITION.

A petition for redetermination of a jeopardy determination will not be accepted unless the petitioner deposits the amount of security indicated in the notice of jeopardy determination within the 10-day period specified in section 5222.6.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5224. REVIEW OF PETITION FOR REDETERMINATION OF JEOPARDY DETERMINATION.

(a) A petition for redetermination of a jeopardy determination may raise any objections the petitioner has to the notice of jeopardy determination, including objections to the appropriateness of issuing the notice of jeopardy determination.

(b) The administrative review of a petition for redetermination of a jeopardy determination follows the same procedures applicable to the review of other petitions for redetermination under article 2A of this chapter and will be done promptly.

(c) A petition for redetermination of a jeopardy determination issued under the Hazardous Substances Tax Law or Covered Electronic Waste Recycling Fee will be reviewed in accordance with sections 5215 and 5215.4, respectively.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6538, 7700, 8828, 30243, 32312, 38433, 43351, 45352, 46302, 50120.2, 55102, 60332.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5225. PERSONS WHO MAY FILE AN APPLICATION FOR ADMINISTRATIVE HEARING; MANNER OF FILING; AND CONSOLIDATION WITH PETITION.

(a) The person against whom a jeopardy determination is made may file an application for an administrative hearing for one or more of the following purposes:

- (1) To establish that the jeopardy determination is excessive.
- (2) To establish that the sale of the property that may be seized after issuance of the jeopardy determination, or any part thereof, should be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.
- (3) To request the release of all or part of the property to the person.
- (4) To request a stay of collection activities.
- (5) To request administrative review of any other issue raised by the jeopardy determination.

(b) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of applications for administrative hearings and related documents. An application for an administrative hearing or related document may be filed electronically under this section if an electronic copy of such document is transmitted to the appropriate section or group identified in the notice of jeopardy determination in accordance with instructions provided on the Board's website at www.boe.ca.gov. An application for an administrative hearing and related documents may also be filed by mailing the application and related documents to the address shown on the notice of jeopardy determination, or hand delivering the application and related documents to the Board's headquarters at 450 N Street in Sacramento, California. The Chief of Board Proceedings may reject any application for an administrative hearing or related document filed in any manner that is not authorized by this section.

(c) If an application is filed under this section and a petition is filed under section 5222, the application and petition will be consolidated into one administrative hearing.

(d) A petition for redetermination of a jeopardy determination issued under the Tax on Insurers Law or Water Rights Fee Law must be filed in accordance with section 5214 and 5215.6, respectively.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 50120.3, 55103, 60333.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5226. LIMITATION PERIOD FOR FILING APPLICATION FOR ADMINISTRATIVE HEARING.

(a) An application for administrative hearing shall be filed within the earlier of 30 days from the date that the notice of jeopardy determination was mailed or personally served.

(b) An application for administrative hearing filed after the expiration of the time period provided for in subdivision (a) should be accompanied by a statement demonstrating why the person believes there was good cause for the person's failure to file a timely application.

(c) If good cause existed for failing to file a timely application, an administrative hearing may still be granted.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5227. CONTENTS OF APPLICATION FOR ADMINISTRATIVE HEARING.

Every application for administrative hearing must:

- (a) Be in writing.
- (b) Identify the purpose for which the person has applied for an administrative hearing.
- (c) State the specific factual or legal grounds upon which the application is founded.
- (d) Be signed by the person or the person's authorized representative.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5228. OPTION TO POST SECURITY WITH APPLICATION FOR ADMINISTRATIVE HEARING.

- (a) A person is not required to post security to obtain an administrative hearing.
- (b) Property seized under a notice of jeopardy determination or jeopardy assessment may not be sold without the consent of the owner during the first 30 days after service of such notice, nor while a timely application for administrative hearing is pending. The storing of the property during the period the application is pending will be at the applicant's expense. Storage expenses may be waived, credited, or refunded.
- (c) The filing of an application for an administrative hearing will not stay other collection activities not identified in subdivision (b). A stay of other collection activities will only arise if the person deposits the amount of security indicated in the notice of jeopardy determination within the 10-day period specified in section 5223.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601. Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5229. ASSIGNMENT OF APPLICATION FOR ADMINISTRATIVE HEARING TO APPEALS DIVISION FOR APPEALS CONFERENCE.

- (a) Upon receipt of an application for administrative hearing, Board Staff shall promptly:
 - (1) Acknowledge its receipt;
 - (2) Assign the application to the Appeals Division for an appeals conference;
 - (3) Schedule an appeals conference; and
 - (4) Notify the applicant regarding the date, time and location of the appeals conference.

(b) Upon completion of the appeals conference, Appeals Staff will promptly issue a determination as to each issue raised in the application and provide notice of the determination to the applicant in a Decision and Recommendation. Appeals Staff may find that the applicant is not entitled to the relief requested or may order that one or more of the following types of relief be granted: that the sale of the property will irreparably damage the applicant and that the property will not be sold; that the property, or a portion thereof, be released to the applicant or to the person from whom it was seized; that the tax as determined is excessive and that the amount of the determination be reduced.

(c) If the applicant disagrees with the Decision and Recommendation in whole or in part, the applicant may request an oral hearing before the Board. A request for an oral hearing may be denied on an application for administrative hearing. If an oral hearing is granted, the matter shall be scheduled for hearing as soon as practicable.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 6538.5, 7051, 7700.5, 8251, 8828.5, 9251, 13170, 30243.5, 30451, 32313, 32451, 38435, 38701, 40171, 41128, 43352, 45353, 43501, 45851, 46303, 46601, 50120.3, 50152, 55103, 55301, 60333, 60601.
Reference: Revenue and Taxation Code sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103, 60333.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 3: CLAIMS FOR REFUND

5230. PERSONS WHO MAY FILE A CLAIM FOR REFUND; LIMITATIONS ON CERTAIN CLAIMS.

(a) Any person, supplier, distributor, insurer, surplus line broker, user, or tax or fee payer who believes that it has overpaid a tax or fee, or interest or penalty thereon, or other refundable amount to the Board may file a claim for refund. An authorized representative may file a claim for refund on such persons' behalf.

(b) Motor Vehicle Fuel Tax Law. A claim for refund based upon the following grounds should be filed with the Controller and is not governed by this chapter:

(1) The motor vehicle fuel was purchased and used for a purpose other than operating motor vehicles on public highways in California.

(2) The motor vehicle fuel was exported for use outside of California.

(3) The motor vehicle fuel was sold to the armed forces of the United States for use in ships or aircraft, or for use outside of California in a manner that would qualify for an exemption under Revenue and Taxation Code section 7401.

(4) The motor vehicle fuel was purchased for and used in construction equipment, which is exempt from vehicle registration under the Vehicle Code.

(5) The claimant is a supplier who sold motor vehicle fuel to a consulate office or consulate employee under circumstances that would have entitled the supplier to an exemption under Revenue and Taxation Code section 7401, subdivision (a)(4).

(6) The claimant is a supplier that:

(A) Removed motor vehicle fuel from a rack and paid tax on that removal, or purchased tax-paid motor vehicle fuel outside the bulk transfer/terminal system; and

(B) Delivered the tax-paid motor vehicle fuel to another approved terminal from which the supplier subsequently removed the tax-paid motor vehicle fuel at the terminal rack and paid a second tax on the same amount of motor vehicle fuel.

(7) The claimant is a supplier who purchased tax-paid motor vehicle fuel in the bulk transfer/terminal system and subsequently removed the tax-paid motor vehicle fuel at the terminal rack, and paid tax upon the same amount of motor vehicle fuel twice.

(8) The claimant used tax-paid motor vehicle fuel to propel passenger carrying vehicles used for the transportation of persons for hire, compensation, or profit.

(9) The claimant paid tax attributable to the distribution of motor vehicle fuel for use or used in propelling a vessel operated by its owner on waters located on private property owned or controlled by it.

(c) Hazardous Substances Tax Law.

(1) All claims for refund filed under Revenue and Taxation Code section 43452 will be acknowledged. However, no determination will be made as to whether any substance is a hazardous or extremely hazardous waste. A claim for refund based upon such grounds will be forwarded to the Director of Toxic Substances Control for determination in accordance with Revenue and Taxation Code section 43452.

(2) A claim for refund required to be forwarded to the Director of Toxic Substances Control under paragraph (1) will not be considered until after the Director of Toxic Substances Control has made his or her determination.

(3) Childhood Lead Poisoning Prevention Fee.

(A) All claims for refund of the Childhood Lead Poisoning Prevention Fee will be acknowledged. A claim for refund of the Childhood Lead Poisoning Prevention Fee may be founded upon any grounds, including such grounds as:

(i) The petitioner's industry did not contribute in any manner to environmental lead contamination;

(ii) The petitioner's lead or lead containing product does not currently or did not historically result in quantifiable persistent lead contamination; or

(iii) The amount of the fee assessed does not reflect the petitioner's market share or is incorrectly computed.

(B) A claim for refund described in clauses (i), (ii), or (iii) of subparagraph (A) will not be acted upon until after the State Director of Health Services has acted upon the claimant's application for exemption from the fee or reassessment of the fee. Applications for exemption should be submitted to the State Department of Health Care Services in the manner provided in California Code of Regulations, title 17, section 33040. Applications for reassessment should be submitted to the State Department of Health Services in the manner provided in California Code of Regulations, title 17, section 33050.

(d) Covered Electronic Waste Recycling Fee. All claims for refund of the Covered Electronic Waste Recycling Fee will be acknowledged. However, no determination will be made as to whether an item is or is not a covered electronic device. Claims for refund based upon such grounds will be forwarded to the Department of Toxic Substances Control for determination in accordance with Public Resources Code section 42464.6.

(e) Water Rights Fee Law. A claim for refund filed under the Fee Collection Procedures Law that is based upon the assertion that the State Water Resources Control Board improperly or erroneously determined that a person or entity was required to pay a water rights fee or the amount of such fee will not be accepted. A claim for refund based upon these grounds should be directed to the State Water Resources Control Board. This prohibition does not apply if the determination has already been set aside by the State Water Resources Control Board or a court reviewing the determination.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 6902, 8101, 8101.1, 8101.6, 8101.7, 8102, 8126, 8128, 9151, 9152, 12977, 12978, 30176, 30176.1, 30176.2, 30177, 30361, 30362, 32401, 32402, 32407, 38601, 38602, 40111, 40112, 41100, 41101, 43451, 43452, 45651, 45652, 46501, 46502, 50139, 50140, 55221, 55222, 60501, 60502, 60507, 60521, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5231. LIMITATION PERIOD FOR CLAIM FOR REFUND.

(a) A refund requested in a claim for refund cannot be approved, unless the claim for refund is filed within the time periods provided in this section.

(b) General Limitation Periods. In general, a claim for refund is timely if it is filed prior to the expiration of the last of the following time periods:

(1) Three years from the last day of the calendar month following the close of the reporting period for which the overpayment was made;

(2) Six months from the date the determination became final, if the overpayment was made under the notice of determination; or

(3) Six months from the date of the overpayment.

(c) Alcoholic Beverages Tax Law. Subdivision (b)(1) does not apply to claims for refund filed under the Alcoholic Beverage Tax Law. In lieu thereof, any such claim for refund is timely if filed within three years from the 15th day of the calendar month following the close of the period for which the overpayment being claimed was made.

(d) Cigarette and Tobacco Products Tax Law.

(1) Stamps and Meter Register Settings. Subdivision (b)(1) does not apply to claims for refund for overpayments made with regard to purchases of stamps or meter register settings. In lieu thereof, a claim for refund for an overpayment made with regard to a purchase of stamps or meter register settings is timely if filed within three years from the due date for the payment of the purchase for which the overpayment was made.

(2) Other Claims for Refund. Subdivision (b)(1) does not apply to claims for refund filed under the Cigarette and Tobacco Products Tax Law, which are not described in paragraph (1) of this subdivision. In lieu thereof, a claim for refund described in this paragraph (2) is timely if filed within three years from the 25th day after the close of the monthly period for which the overpayment being claimed was made.

(3) Exported Tobacco Products. Notwithstanding subdivision (b) and paragraphs (1) and (2) of this subdivision, claims for refund based upon the grounds that the tobacco products upon which the tax was paid were exported, must be filed within three months after the close of the calendar month in which the tobacco products were exported.

(e) Tax on Insurers Law. Subdivision (b)(1) does not apply to claims for refund filed under the Tax on Insurers Law. In lieu thereof, any such claim for refund is timely if filed within four years after April 1st of the year following the year for which the overpayment was made. A claim for refund filed under the Tax on Insurers Law may be filed in accordance with section 5233 or may be filed with the Commissioner of Insurance.

(f) Emergency Telephone Users Surcharge Law. Subdivision (b)(1) does not apply to claims for refund filed under the Emergency Telephone Users Surcharge Law. In lieu thereof, any such claim is timely if filed within three years after the last day of the second month following the close of the month for which the overpayment being claimed was made.

(g) Hazardous Substances Tax Law. Subdivision (b)(1) does not apply to claims for refund filed under the Hazardous Substances Tax Law. In lieu thereof, any such claim is timely if filed within three years after the date taxes were due and payable for the period for which the overpayment was made.

(h) Fee Collection Procedures Law, Integrated Waste Management Fee Law, Underground Storage Tank Maintenance Fee Law, and Oil Spill Response, Prevention, and Administration Fees Law. Subdivision (b)(1) does not apply to claims for refund filed under the Fee Collection Procedures Law, Integrated Waste Management Fee Law, Underground Storage Tank Maintenance Fee Law, and Oil Spill Response, Prevention, and Administration Fees Law. In lieu thereof, any such claim is timely if filed within three years after the due date of the payment for the period for which the overpayment was made.

(i) Diesel Fuel Tax Law. Subdivision (b) does not apply to claims for refund filed under Revenue and Taxation Code section 60501 (diesel fuel lost sold or removed) or 60502 (ultimate vendor claims). In lieu thereof, any such claim for refund is timely if filed within three years from the date of the purchase of the diesel fuel to which the claim relates, or, if the tax was not invoiced at the time of the purchase of the diesel fuel, six months after the receipt of an invoice for the tax, whichever period expires later.

(j) Waivers.

(1) In addition, where a claimant has executed a waiver extending the statute of limitation for assessment applicable to a reporting period, any claim for refund filed with regard to that reporting period during the time agreed to in the waiver will be timely filed.

(2) This subdivision regarding waivers does not apply to claims for refund filed under the Tax on Insurers Law or the Emergency Telephone Users Surcharge Law, or claims described in subdivision (i) of this section.

(k) Financially Disabled Individuals.

(1) The periods described in subdivisions (b), (c), (d)(2), (f), (g), and (h) of this section are suspended during any period of an individual's life that the individual is financially disabled.

(2) An individual is financially disabled if:

(A) The individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment of the individual that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months; and

(B) Proof of the individual's impairment is provided.

(3) An individual is not financially disabled during any period that the individual's spouse or any other person is authorized to act on behalf of the individual in financial matters.

(4) This subdivision does not apply to claims for refund filed under the Tax on Insurers Law or claims for refund of overpayments made with respect to purchases of stamps or meter register settings filed under the Cigarette and Tobacco Products Tax Law.

(l) Levies and Liens. A claim for refund for an overpayment of a sales or use tax collected by means of levy, through the use of liens, or by other enforcement procedures is timely if filed within three years of the overpayment.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6902, 6902.3, 6902.4, 8128, 8128.1, 9152, 9152.1, 12978, 30178, 30178.1, 30362, 30362.1, 32402, 32402.1, 32407, 38602, 38602.5, 40112, 40112.1, 41101, 41101.1, 43452, 43452.1, 45652, 45652.1, 50140, 50140.1, 55222, 55222.1, 60507, 60522, 60522.1.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5231.5. FAILURE TO FILE TIMELY CLAIM FOR REFUND.

A claim for refund must be reviewed to determine whether it is timely. The claimant's failure to file a claim within the applicable time period, as provided for in section 5231, is a waiver of any demand against the State on account of the overpayment.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6905, 8128, 9152, 12980, 30178, 30178.1, 30364, 32403, 38604, 40114, 41103, 43453, 45653, 46504, 50141, 55223, 60507, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5232. GENERAL CONTENTS OF CLAIMS FOR REFUND.

(a) All Claims. Every claim for refund must be in writing, must be signed by the claimant or the claimant's authorized representative, and must include:

- (1) The specific grounds or reasons upon which the claim is founded.
- (2) The reporting period with regard to which the claimant made the overpayment being claimed as a refund.
- (3) The amount of the refund being claimed, if known.
- (4) Information necessary to contact the claimant or claimant's authorized representative.

(b) Sales and Use Tax Claims. Claims for refund filed under the Sales and Use Tax Law may also break down the claimed refund into state, local, and district tax amounts.

(c) Multiple Claims. If a single claim for refund is filed for more than one reporting period, the claimant may separately state the information required by subdivisions (a) and (b) for the periods of the claim.

(d) Supporting Documentation. Claims for refund may be accompanied by whatever copies of supporting written arguments and documentary evidence is necessary to verify and approve the claim. Failure to include such information along with a claim may delay its processing.

(e) Forms. The use of a completed form provided by the Board for use as a claim for refund will satisfy the requirements of this section (other than subdivision (d)). However, this subdivision does not require taxpayers to use a form.

(f) Returns and Payments. In no event may the claimant deduct amounts included in a claim for refund from the amount required to be reported and paid for any reporting period.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6904, 8129, 9153, 12979, 30176, 30176.1, 30176.2, 30177, 30363, 32402, 32402.1, 32407, 38603, 40113, 41102, 43452, 45652, 46503, 50140, 55222, 60501, 60502, 60505, 60505.5, 60523.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5232.4. CONTENTS OF CLAIMS FOR REFUND UNDER DIESEL FUEL TAX LAW.

Notwithstanding section 5232, claims for refund of payments made with respect to the Diesel Fuel Tax Law must be prepared and filed in the following manner:

(a) Diesel Fuel that is Lost, Sold, or Removed.

(1) A claim for refund must satisfy the requirements of paragraph (2) if it is based upon the grounds that:

(A) Tax was imposed on the diesel fuel to which the claim relates; and

(B) The claimant bought or produced the diesel fuel to which the claim relates and the same diesel fuel was:

(i) Used for purposes other than operating motor vehicles upon the public highways of California;

(ii) Exported for use outside of California;

(iii) Used in construction equipment that is exempt from registration under the Vehicle Code;

(iv) Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture;

(v) Used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency;

(vi) Sold by a supplier to any consulate office or consulate employee;

(vii) Lost in the ordinary course of handling, transportation, or storage;

(viii) Sold to the United States, its agencies, or instrumentalities;

(ix) Sold to a train operator for use in a diesel-powered train or other off-highway use; or

(x) Removed from an approved terminal at the terminal rack.

(2) A claim for refund based upon the grounds described in paragraph (1) must:

(A) Be prepared and filed on a form prescribed by the Board.

(B) Be accompanied by the original invoice showing the purchase, or, if no original invoice was created, an electronic invoice and the original bill of lading or fuel manifest.

(C) Include the name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.

(D) Include the claimant's statement that the diesel fuel covered by the claim did not contain visible evidence of dye.

(E) Include a statement by the person who sold the diesel fuel to the claimant that the diesel fuel did not contain visible evidence of dye.

(F) Identify the total amount of diesel fuel covered by the claim.

(G) Describe the use made of the diesel fuel.

(H) Be accompanied by proof that the diesel fuel was exported, if the claim is based upon the grounds that the diesel fuel was exported.

(3) Claims for refund based upon the grounds provided for in paragraph (1) must be filed on a calendar year basis, except that claims for refund of more than \$750 may be filed for a quarter of a calendar year.

(b) Ultimate Vendors of Diesel Fuel. A claim for refund based upon the grounds that the claimant was an ultimate vendor that sold tax-paid diesel fuel to an ultimate purchaser for use on a farm for farming purposes, or use in an exempt bus operation may not be filed for an amount less than \$200 or a period shorter than one week and must:

- (1) Be prepared and filed on a form prescribed by the Board.
 - (2) Contain the claimant's permit number.
 - (3) Include the name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.
 - (4) Include the name, address, telephone number, and federal taxpayer identification number of each farmer or the permit number of each exempt bus operator that bought the diesel fuel from the claimant and the number of gallons of diesel fuel the claimant sold to each.
 - (5) Include the claimant's statement that the diesel fuel covered by the claim did not contain evidence of visible dye.
 - (6) Identify the total amount of diesel fuel covered by the claim.
 - (7) Include the claimant's statement that it has an unexpired exemption certificate described in Revenue and Taxation Code section 60503 and has no reason to believe the certificate is false.
 - (8) Include the claimant's statement that the amounts claimed have not been refunded to the claimant previously.
- (c) Persons filing claims for refund under this section must use the proper form prescribed by the Board and should contact the Fuel Taxes Division for the appropriate form.
- (d) Other Claims. Claims for refund under the Diesel Fuel Tax Law that are not described in subdivision (a) or (b) may be filed in the manner provided for in section 5232.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 60601.
Reference: Revenue and Taxation Code sections 60501, 60502, 60505, 60505.5, 60523.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5232.6. REQUIREMENTS FOR CLAIMS FOR REFUND REGARDING LOST, UNMARKETABLE OR CONDEMNED ALCOHOLIC BEVERAGES.

A claim for refund based upon the grounds provided for in Revenue and Taxation Code section 32407 must satisfy the requirements of California Code of Regulations, title 18, section 2553.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 32451.
Reference: Revenue and Taxation Code section 32407.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5232.8. ADDITIONAL REQUIREMENTS FOR CLAIMS FOR REFUND FILED UNDER THE CIGARETTE AND TOBACCO PRODUCTS TAX LAW.

In addition to the requirements of section 5232, claims for refund of amounts paid with regard to purchases of stamps or meter register settings must satisfy the requirements of and be prepared and filed on any form required by California Code of Regulations, title 18, sections 4061 through 4065. All other claims for refund filed under the Cigarette and Tobacco Products Tax Law are not required to comply with this additional requirement. Contact the Excise Taxes and Fees Division for the appropriate form.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 30451.
Reference: Revenue and Taxation Code sections 30176, 30176.1, 30176.2, 30177, 30363.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5233. FILING CLAIMS FOR REFUND.

(a) The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of claims for refund and related documents. A claim for refund or related document may be filed electronically under this section if an electronic copy of such document is transmitted to the appropriate section or group identified in

subdivision (b) or (c) for the tax or fee law at issue in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(b) Claims for refund and related documents filed under the Sales and Use Tax Law may also be mailed to the:

Audit Determination and Refund Section, MIC: 39
Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0039

(c) Other claims for refund and supporting documents may be mailed to the address provided in this subdivision for the particular tax or fee law at issue:

(1) Hazardous Substances Tax Law (Except Childhood Lead Poisoning Prevention Fee), Covered Electronic Waste Recycling Fee, Integrated Waste Management Fee Law, Tire Recycling Fee, Occupational Lead Poisoning Prevention Fee, Water Rights Fee Law, and Marine Invasive Species Fee Collection Law.

Environmental Fees Division, MIC: 57
Audit Unit
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0057

(2) Tax on Insurers Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge, and Natural Gas Surcharge.

Excise Taxes Division, MIC: 56
Refund and Petition Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0056

(3) Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Diesel Fuel Tax Law, and Childhood Lead Poisoning Prevention Fee.

Fuel Tax Division, MIC: 30
Refund Group
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0030

(4) Timber Yield Tax Law.

Timber Yield Tax Section, MIC: 60
State Board of Equalization
P. O. Box 942879
Sacramento, CA 94279-0060

(d) A claim for refund and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California.

(e) The Chief of Board Proceedings may reject any claim for refund or related document filed in any manner that is not authorized by this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6902, 8128, 9152, 12978, 30178, 30178.1, 30362, 32402, 32402.1, 32407, 38602, 40112, 41101, 43452, 45652, 46502, 50140, 55222, 60501, 60502, 60507, 60521, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5234. ASSIGNMENT AND ACKNOWLEDGMENT OF CLAIM FOR REFUND.

Once a claim for refund is received, it will be assigned to the appropriate section or group listed in section 5233 based upon the type of tax or fee at issue, and Board Staff from the assigned section will promptly

send the claimant a letter acknowledging the claim, which will contain the contact information for the assigned section or group.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 6902, 8126, 8128, 9151, 9152, 12977, 12978, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 32401, 32402, 32402.1, 32407, 38601, 38602, 40111, 40112, 41100, 41101, 43451, 43452, 45651, 45652, 46501, 46502, 50139, 50140, 55221, 55222, 60501, 60502, 60507, 60521, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5234.5. REVIEW PROCESS FOR CLAIMS FOR REFUND AND REQUESTS FOR ADDITIONAL INFORMATION.

Claims for refund are generally reviewed in the order that they are received. If additional documentary evidence is needed to verify and approve a claim, Board Staff from the assigned section or group will contact the claimant and request such information. The failure to provide such information upon request may result in a denial of the claim for refund.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60506, 60507, 60521, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5235. ACTION ON THE CLAIM FOR REFUND.

(a) Once a claim for refund has been reviewed, Board Staff from the assigned section will recommend that the claim be:

- (1) Granted in its entirety.
- (2) Granted in part and denied in part.
- (3) Denied in its entirety.

(b) If Board Staff in the assigned section or group recommends that a claim be granted in its entirety, Board Staff will:

- (1) Send the claimant a notice of refund showing the amount to be refunded (subject to the requirements of section 5237); and
- (2) Have a refund warrant prepared and sent to the claimant after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(c) If Board Staff in the assigned section recommends that any claim be denied, Board Staff will send the claimant a letter containing its recommendation and an explanation of its reasons for making such recommendation.

(d) A claimant receiving a letter described in subdivision (c) may choose to agree or disagree with the recommendation in whole or in part.

(1) If the claimant agrees with a recommendation to grant a partial refund, Board Staff in the appropriate section will send the claimant a notice of refund showing the partial refund (subject to the requirements of section 5237). Thereafter, Board Staff in the assigned section or group will have a refund warrant prepared and sent to the claimant, but only after determining if such amounts should be credited or offset against other liabilities as provided in section 5238.

(2) If the claimant agrees with a recommendation to deny a refund in its entirety, Board Staff in the assigned section will send the claimant a notice of denial of claim for refund.

(3) If the claimant disagrees with a proposed recommendation to grant a partial refund or deny a refund in its entirety, the claimant may request that the recommendation be reconsidered in an:

(A) Appeals conference conducted under article 6 of this chapter; and/or

(B) Oral hearing before the Board.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5236. DISCRETION TO GRANT OR DENY APPEALS CONFERENCES AND ORAL HEARINGS ON CLAIMS FOR REFUND.

A request for an appeals conference conducted under article 6 of this chapter or oral hearing before the Board may be denied on a claim for refund. Requests will be liberally granted, however, requests may be denied if the claimant has already been provided with an appeals conference and oral hearing on the same issue, and has not submitted any additional arguments or evidence.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 6902, 6906, 8126, 8128, 9151, 9152, 12977, 12978, 12981, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30361, 30362, 30365, 32401, 32402, 32402.1, 32404, 32407, 38601, 38602, 38605, 40111, 40112, 40115, 41100, 41101, 41101.1, 41104, 43451, 43452, 43454, 45651, 45652, 45654, 46501, 46502, 46505, 50139, 50140, 50142, 55221, 55222, 55224, 60501, 60502, 60507, 60521, 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5237. BOARD APPROVAL REQUIRED FOR REFUNDS OVER \$50,000.

(a) If Board Staff in the assigned section or group determines that a refund in excess of \$50,000 should be granted, the recommendation for the proposed refund must be submitted to the Board.

(b) Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether a refund is warranted and in what amount, and will do so without further documentation or testimony from the claimant.

(c) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program are exempt from the requirements of subdivision (a).

(d) Proposed determinations to grant claims for refund of duplicate or erroneous payments made through the electronic funds transfer program in excess of \$50,000 must be submitted to the Executive Director for approval. If the Executive Director approves, Board Staff in the assigned section will send the claimant a notice of refund showing the amount to be refunded, and shall have a refund warrant prepared and sent to the claimant.

(e) Diesel Fuel Tax Law. Claims for refund filed under Revenue and Taxation Code sections 60501 and 60502 may be approved without complying with the requirements of this section.

(f) If Board Staff in the assigned section determines that a refund in excess of \$50,000 should be denied, and the claimant has not disagreed with such determination by requesting an appeals conference with the Appeals Division or oral hearing before the Board, or confirmed a prior request for such a conference or hearing, or such prior requests were denied, the recommendation to deny the refund must be submitted to the Board for approval as provided in subdivision (a).

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6901, 8126, 9151, 12977, 30361, 32401, 38601, 40111, 41100, 43451, 45651, 46501, 50139, 55221, 60521.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5238. CREDITS AND OFFSETS MAY REDUCE REFUNDS.

(a) The amount shown as a refund on a notice of refund is the amount due to the claimant. However, that amount will not be paid directly to the claimant if it is subject to being credited or offset against other amounts owed by the claimant, which are then due and payable.

(b) Any portion of a claimant's refund remaining after the refund has been credited or offset against other amounts that are then due and payable from the claimant will be refunded to the claimant and paid to the claimant.

(c) Diesel Fuel Tax Law. Credits claimed on a return in lieu of claiming a refund under Revenue and Taxation Code sections 60501 and 60502 are not subject to the requirements of this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6483, 6512, 6901, 8126, 8778, 8802, 9151, 12426, 12977, 30176, 30176.1, 30176.2, 30177, 30203, 30222, 30361, 38413, 38422, 38601, 40073, 40082, 40111, 41072, 41081, 41100, 43201, 43451, 45201, 45651, 46201, 46252, 46501, 50113, 50139, 55001, 55221, 60521.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5239. COMBINED CLAIMS FOR REFUND ON BEHALF OF CLASS OF TAXPAYERS.

(a) This section only applies to combined claims for refund of the Sales and Use Tax, including State-administered local sales, transactions, and use taxes.

(b) Procedures Required of Class Representative. The representative claiming a refund on behalf of members of a class must establish:

(1) It is more beneficial to the class and to the State to proceed as a combined claim for refund rather than individually.

(2) The existence and the composition of the class, including:

(A) A description of the members sufficient to identify the persons making up the class.

(B) The approximate number of persons in the class.

(C) The manner in which and the time when the class members shall be identified and notified of the pendency of the combined claim.

(3) The issues of law and fact that are or are not common to all class members, and the approximate number of class members affected by each issue that is not common to all.

(4) The representative's written authority to act as representative for each class member, which authority must authorize Board Staff to release to the representative any confidential information in the Board's files that may be required in connection with the claim. This statement may include a separate claim for refund by the class member or may state that the class member joins in the combined claim.

(5) The representative is a member of the class and when and how the representative became a member. In addition, any unique legal or factual issues pertaining to the representative's claim and any differences between the representative's status as a class member and that of any other class member shall be described.

(6) The representative can fairly and adequately protect the interests of each member of the class and the representative's interests are not antagonistic to members of the class.

(7) When requested by Board Staff, that each member of the class has been notified of the pendency of the claim and each member has had a reasonable opportunity to join in or be excluded from the combined claim.

(c) Action to be Taken by Board Staff.

(1) If Board Staff finds that the claim is a proper combined claim it will, to the extent possible, act upon the claim in the same manner that it would act on any other claim. If Board Staff finds that the claim is not a proper combined claim, it will act only on claims by individual members and notify the representative that the claim is not valid as to others. In determining the amount of any refund due to any member of the class, the

refund is limited to the amount of tax overpayment by that member under the tax law under which the claim was filed.

(2) Before a refund will be made to any member of the class, the amount of the tax overpayment by the member must be established and the representative or member must furnish or make available to Board Staff all contracts, documents, or records (or copies thereof) necessary to verify the overpayment and the amount thereof. If such contracts, documents, or records are not presented to or made available to Board Staff, the representative or member, will be deemed to have failed to exhaust the administrative remedies.

(d) Effect of Action on Combined Claims.

(1) Failure to commence a court action within 90 days after the mailing of the notice of the Board's action on a refund claim as provided in the tax law under which the claim was filed constitutes a waiver of any demand against the state on account of alleged overpayments. This waiver, however, does not apply to persons who have not previously been notified of the claim, or who have notified Board Staff that they desire to be excluded from the combined claim. Nor does the waiver apply to persons involved in a claim to the extent it has been declared invalid as distinguished from persons as to whom a claim has been denied.

(2) A judgment in any court action filed with respect to the denial of any claim is res judicata as to the claimant's tax liability or overpayments for the period involved.

Note: Authority cited: Government Code section 15606(a); Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262 and 7270. Reference: Revenue and Taxation Code sections 6814, 6904 and 6932.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 4A: REQUESTS FOR INNOCENT SPOUSE RELIEF UNDER THE SALES AND USE TAX LAW

5240. PERSONS WHO MAY FILE, CONTENTS OF, AND MANNER OF FILING REQUESTS FOR INNOCENT SPOUSE RELIEF (SALES AND USE TAX, INCLUDING STATE-ADMINISTERED LOCAL SALES, TRANSACTIONS, AND USE TAXES).

(a) Who May Request Relief. A divorced or separated individual that has a sales or use tax liability and meets the requirements of California Code of Regulations, title 18, section 1705.1, subdivision (a), may file a request for innocent spouse relief with the Board.

(b) Request Requirements. A request for innocent spouse relief must be:

- (1) In writing.
- (2) Signed and dated by the individual requesting relief.
- (3) Specifically request innocent spouse tax relief.
- (4) Identify the tax from which relief is sought.

(5) Contain all of the information requested on Form BOE-682-A, including a specific explanation as to why the individual requesting relief believes he or she should not be held responsible for the tax liability at issue.

(c) Use of Forms. A request for innocent spouse relief prepared and filed on a completed Form BOE-682-A satisfies the requirements of subdivision (b).

(d) Limitation Period. A request for innocent spouse relief must be filed with the Board within the time periods provided in California Code of Regulations, title 18, section 1705.1, subdivision (e).

(e) Filing Requests. The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of request for innocent spouse relief and related documents. A request for innocent spouse relief or related document may be filed electronically under this section if a copy of the document is transmitted to the Offer in Compromise Section in accordance with instructions provided on the Board's website at www.boe.ca.gov. Requests for innocent spouse relief may be mailed to the Offer in Compromise Section at the following address:

Offer in Compromise Section, MIC: 52
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0052

A request for innocent spouse relief and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California. The Chief of Board Proceedings may reject any request for innocent spouse relief or related document filed in any manner that is not authorized by this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051.
Reference: Revenue and Taxation Code section 6456, 7202, 7203, 7261, 7262, 7270.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5241. ACKNOWLEDGEMENT AND REVIEW OF REQUESTS FOR INNOCENT SPOUSE RELIEF.

(a) Assignment and Review. Once received, a request for innocent spouse relief will be assigned to Board Staff in the Offer in Compromise Section who will:

(1) Send the individual requesting relief an acknowledge letter containing the contact information for the Offer in Compromise Section.

(2) Inform the non-requesting spouse that the request has been filed and the basis for the request, and permit the non-requesting spouse to submit information to support or counter the request.

(3) Evaluate the merits of the request.

(4) Request additional documentation from the individual requesting relief, if necessary.

(b) Granted Request for Innocent Spouse Relief. If Board Staff in the Offer in Compromise Section approves a request for innocent spouse relief, Board Staff will prepare and send the individual who requested relief a letter explaining the relief that was granted.

(c) Denied Request for Innocent Spouse Relief. If Board Staff in the Offer in Compromise Section denies a request for innocent spouse relief, Board Staff will:

(1) Prepare and send the individual requesting relief a letter explaining why the request was denied; and

(2) If it appears that the individual requesting relief might be eligible for other equitable relief as provided in California Code of Regulations, title 18, section 1705.1, subdivision (h), Board Staff in the Offer in Compromise Section will include a questionnaire and financial statement for the individual requesting relief to complete and return.

(d) Requests for Other Equitable Relief. If the individual requesting relief returns a completed questionnaire and financial statement, Board Staff in the Offer in Compromise Section will review the documents to see if other equitable relief is warranted using the factors provided in California Code of Regulations, title 18, section 1705.1, subdivision (h). Once this review is completed, Board Staff will mail the individual requesting relief a letter granting or denying equitable relief and explaining why such relief was granted or denied.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051.
Reference: Revenue and Taxation Code section 6456, 7202, 7203, 7261, 7262, 7270.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5242. REQUESTS FOR RECONSIDERATION BY THE BOARD.

(a) If a request for other equitable relief is denied, the individual requesting relief may request that the denial be reconsidered by the Board at an oral hearing as provided in California Code of Regulations, title 18, section 1705.1, subdivision (h). A request for an oral hearing may be denied on a request for other equitable relief, however, requests will be liberally granted.

(b) An oral hearing may be requested by following the instructions contained on the denial letter described in section 5241, subdivision (d).

(c) If a request for an oral hearing is granted, the individual requesting relief may be required to participate in an appeals conference with the Appeals Division prior to the oral hearing.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051.
Reference: Revenue and Taxation Code section 6456, 7202, 7203, 7261, 7262, 7270.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 4B: SUCCESSOR'S REQUEST FOR RELIEF OF PENALTY UNDER THE SALES AND USE TAX LAW

5243. SUCCESSOR'S REQUEST FOR RELIEF.

A successor requesting relief from penalties as provided in California Code of Regulations, title 18, section 1702, subdivision (d)(2), may include its request for relief in its petition for reconsideration or amend its previously filed petition to include such request. If the successor has not filed a petition for reconsideration and does not intend to do so, the successor may file a request for relief from penalties without filing a petition for reconsideration. Every successor's request for relief filed under this section must include a written statement signed under penalty of perjury stating the facts upon which the claim for relief is based, regardless of whether the request is included in a petition for reconsideration. Such request for relief must be filed in accordance with the procedures in article 2A of this chapter for filing a petition for redetermination under the Sales and Use Tax Law.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 7051.
Reference: Revenue and Taxation Code section 6814.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 4C: OTHER REQUESTS FOR RELIEF OF PENALTIES AND INTEREST

5244. NO INDEPENDENT RIGHT TO ORAL BOARD HEARING ON A REQUEST FOR RELIEF; APPLICABLE PROCEDURES FOR REQUESTS INCLUDED IN PETITIONS OR CLAIMS; AND ASSOCIATION WITH RELATED PETITIONS OR CLAIMS.

(a) In general, a person filing a request for relief described in this article does not have a right to an oral hearing before the Board on such request. A request for an oral hearing on a request for relief may be granted or denied.

(b) If a request for relief described in this article is included in a timely filed petition for redetermination or petition for reconsideration, or claim for refund, the procedures applicable to such petitions or claims apply to the request for relief. A request for relief included in a petition for redetermination or petition for reconsideration, or claim for refund must satisfy the requirements of this article applicable to such request.

(c) Any request for relief filed under this article may be associated with any pending petition for redetermination, petition for reconsideration, or claim for refund filed by the same person and covering the same periods as the request for relief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5245. AUTHORITY TO GRANT RELIEF FOR REASONABLE CAUSE AND CONTENTS OF REQUESTS FOR RELIEF FOR REASONABLE CAUSE.

(a) Authority to Grant Relief. If a person's failure to make a timely return, report, payment, or prepayment, or failure to comply with a written notice issued under Revenue and Taxation Code section 6074,

subdivision (a) is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the following penalties imposed under:

- (1) Sales and Use Tax Law. Revenue and Taxation Code sections 6074, 6476, 6477, 6479.3, 6480.4, 6480.8, 6511, 6565, 6591, 7051.2, 7073, and 7074.
- (2) Motor Vehicle Fuel Tax Law. Revenue and Taxation Code sections 7655, 7659.5, 7659.6, 7659.9, 7660, 7705, 7713, 7726, and 7727.
- (3) Use Fuel Tax Law. Revenue and Taxation Code sections 8760, 8801, 8854, and 8876.
- (4) Tax on Insurers Law. Revenue and Taxation Code sections 12258, 12282, 12287, 12631, 12632, and 12633.
- (5) Cigarette and Tobacco Products Tax Law. Revenue and Taxation Code sections 30171, 30190, 30221, 30264, and 30281.
- (6) Alcoholic Beverage Tax Law. Revenue and Taxation Code sections 32252, 32260, 32291, and 32305.
- (7) Timber Yield Tax Law. Revenue and Taxation Code sections 38421 and 38451.
- (8) Energy Resources Surcharge Law. Revenue and Taxation Code sections 40067, 40081, 40096, and 40101.
- (9) Emergency Telephone Users Surcharge Law. Revenue and Taxation Code sections 41060, 41080, 41090, and 41095.
- (10) Hazardous Substances Tax Law. Revenue and Taxation Code sections 43155, 43170, and 43306.
- (11) Integrated Waste Management Fee Law. Revenue and Taxation Code sections 45153, 45160, and 45306.
- (12) Oil Spill Response, Prevention, and Administration Fees Law. Revenue and Taxation Code sections 46154, 46154.1, 46160, 46251, and 46356.
- (13) Underground Storage Tank Maintenance Fee Law. Revenue and Taxation Code sections 50112, 50112.7, and 50119.
- (14) Fee Collection Procedures Law. Revenue and Taxation Code sections 55042, 55050, and 55086.
- (15) Diesel Fuel Tax Law. Revenue and Taxation Code sections 60207, 60250, 60301, 60338, 60355, 60361, and 60361.5.

(b) Contents of Request.

(1) A request for relief based upon reasonable cause and circumstances beyond the person's control must be in writing, identify the penalty from which relief is sought, state the specific facts upon which the request is based, and be signed by the person requesting relief under penalty of perjury.

(2) Form BOE-735, Request for Relief of Penalty, may be used to prepare and submit a request for relief under this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6592, 7657, 8877, 12636, 30282, 32255, 38452, 40102, 41096, 43157, 45155, 46156, 50112.2, 55044, 60209.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5246. AUTHORITY TO GRANT RELIEF DUE TO UNREASONABLE ERROR OR DELAY AND CONTENTS OF REQUESTS FOR RELIEF DUE TO UNREASONABLE ERROR OR DELAY.

(a) A person may be relieved of interest imposed under the tax and fee laws described in subdivision (b), if the person was charged interest due to:

- (1) Unreasonable error or delay:
 - (A) By Board Staff acting in his or her official capacity; and

(B) No significant aspect of the error or delay is attributable to an act or failure to act by the tax or fee payer.

(2) An error by an employee of the Department of Motor Vehicles in calculating the use tax due on a vehicle or vessel registered with the Department of Motor Vehicles.

(b) This section applies to interest imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law.

(c) A request for relief of interest based upon the ground set forth in subdivision (a) of this section must:

(1) Be in writing;

(2) Specifically identify the error or delay that caused the person requesting relief to be charged interest;

(3) Specifically identify the period for which interest relief is sought; and

(4) Be signed by the person requesting relief under penalty of perjury.

(d) Form BOE 735-A, Request for Relief of Interest Unreasonable Error or Delay, may be used to prepare and submit a request for relief under this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6593.5, 7658.1, 8878.5, 30283.5, 32256.5, 38455, 40103.5, 41097.5, 43158.5, 45156.5, 46157.5, 50112.4, 55046, 60212.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5247. AUTHORITY TO GRANT RELIEF DUE TO REASONABLE RELIANCE ON WRITTEN ADVICE AND CONTENTS OF REQUESTS FOR RELIEF DUE TO REASONABLE RELIANCE ON WRITTEN ADVICE.

(a) A person may be relieved from liability for the payment of a tax or fee imposed under the tax and fee laws identified in subdivision (c), including any penalties and interest added thereto, where the liabilities resulted from the person's failure to make a timely report, return or payment and such failure is found to be due to reasonable reliance on:

(1) Written advice given under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (b) or section 4902, subdivision (b); or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (c) or section 4902, subdivision (c); or

(3) Written advice given in a prior audit of that person under the conditions set forth in California Code of Regulations, title 18, section 1705, subdivision (d) or 4902, subdivision (d).

(b) Written advice may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person.

(c) This section applies to taxes and fees imposed under the Sales and Use Tax Law, Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention and Administration Fee Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and the Diesel Fuel Tax Law.

(d) A request for relief due to reasonable reliance upon written advice must:

(1) Be in writing;

(2) Include the specific facts upon which the request for relief is based;

(3) Be signed by the person requesting relief under penalty of perjury; and

(4) Include an attached copy of the person's written request for written advice and a copy of the written advice relied upon.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6596, 7657.1, 8879, 30284, 32257, 38454, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, 60210.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5248. AUTHORITY TO GRANT RELIEF DUE TO DISASTER AND CONTENTS OF REQUESTS FOR RELIEF DUE TO DISASTER.

(a) If a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest imposed under:

(1) Sales and Use Tax Law. Revenue and Taxation Code sections 6459, 6480.4, 6480.8, 6513, 6591, and 6592.5.

(2) Motor Vehicle Fuel Tax Law. Revenue and Taxation Code sections 7655, 7656, 7659.9, 7661, and 7706.

(3) Use Fuel Tax Law. Revenue and Taxation Code sections 8754, 8760, 8803, and 8876.

(4) Tax on Insurers Law. Revenue and Taxation Code sections 12258, 12287, 12307, 12631, and 12632.

(5) Cigarette and Tobacco Products Tax Law. Revenue and Taxation Code sections 30815, 30190, 30223, and 30281.

(6) Alcoholic Beverage Tax Law. Revenue and Taxation Code sections 32252, 32253, 32260, and 32291.

(7) Timber Yield Tax Law. Revenue and Taxation Code sections 38405, 38423, and 38451.

(8) Energy Resources Surcharge Law. Revenue and Taxation Code sections 40065, 40067, 40083, and 40101.

(9) Emergency Telephone Users Surcharge Law. Revenue and Taxation Code sections 41054, 41060, 41082, and 41095.

(10) Hazardous Substances Tax Law. Revenue and Taxation Code sections 43154, 43155, 43170, and 43201.

(11) Integrated Waste Management Fee Law. Revenue and Taxation Code sections 45152, 45153, 45160, and 45201.

(12) Oil Spill Response, Prevention, and Administration Fees Law. Revenue and Taxation Code sections 46153, 46154, 46160, and 46253.

(13) Underground Storage Tank Maintenance Fee Law. Revenue and Taxation Code sections 50111, 50112, and 50112.7.

(14) Fee Collection Procedures Law. Revenue and Taxation Code sections 55041, 55042, 55050, and 55061.

(15) Diesel Fuel Tax Law. Revenue and Taxation Code sections 60207, 60208, 60250, 60302, and 60339.

(b) A request for relief of interest due to a disaster must:

(1) Be in writing;

(2) Identify the disaster due to which relief is sought;

(3) Identify the period for which relief is sought; and

(4) Be signed by the person requesting such relief under penalty of perjury.

(c) Form BOE-27, Penalty and Interest Relief for Disaster Victims, may be used to prepare and submit a request for relief under this section.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6593, 7658, 8878, 12637, 30283, 32256, 38453, 40103, 41097, 43158, 45156, 46157, 50112.3, 55046.5, 60211.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5249. FILING REQUESTS FOR RELIEF.

(a) A request for relief of an unpaid amount may be filed in the manner provided in section 5216 for the filing of a petition for redetermination concerning the same tax or fee law at issue in the request for relief.

(b) A request for relief of a previously paid amount may be filed in the manner provided in section 5233 for the filing of a claim for refund concerning the same tax or fee law at issue in the request for relief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5249.4. ASSIGNMENT AND ACKNOWLEDGEMENT OF REQUESTS FOR RELIEF.

(a) Sales and Use Tax Law.

(1) Generally, a request for relief of an unpaid amount filed under the Sales and Use Tax Law will be assigned to and reviewed by Board Staff in the Petitions Section. However, a request for relief of an amount included in a return, will be assigned to and reviewed by Board Staff in the Return Analysis Section regardless of whether the amount is paid.

(2) A request for relief of a previously paid amount filed under the Sales and Use Tax Law may be treated as a claim for refund, and assigned to and reviewed by Board Staff in the Audit Determination and Refund Section under the procedures contained in article 3 of this chapter.

(b) Special Taxes.

(1) A request for relief filed under any tax or fee law governed by this chapter (other than the Sales and Use Tax Law), will be assigned to and reviewed by Board Staff in the appropriate section responsible for the particular tax or fee law concerned.

(2) If the request for relief concerns previously paid amounts, the request will be treated as a claim for refund and assigned to and reviewed by Board Staff in the appropriate section under the procedures contained in article 3 of this chapter.

(c) Once the request for relief is assigned, the assigned Board Staff will promptly send the person requesting relief an acknowledgement letter containing the contact information for the assigned section, which may include a request for additional information.

(d) This section does not apply to requests for relief included in a petition for redetermination, petition for reconsideration, or claim for refund that are reviewed in accordance with the procedures applicable to such petitions or claims.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157,

46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5249.6. REVIEWING REQUESTS FOR RELIEF.

(a) The assigned Board Staff will review a request for relief to:

- (1) Determine if the request satisfies the requirements of this article 4C; and
- (2) Determine if relief is warranted.

(b) In reviewing a request for relief, the assigned Board Staff may request additional information from the person requesting relief.

(c) Once the review is completed, the assigned Board Staff may determine that:

- (1) No relief is warranted;
- (2) Partial relief is warranted; or
- (3) Full relief is warranted.

(d) Once the determination in subdivision (c) is made, the assigned Board Staff shall prepare and mail the person requesting relief a letter containing his or her decision and an explanation thereof.

(e) If the person requesting relief disagrees with the assigned Board Staff's decision, the person requesting relief may request reconsideration of the decision by the Deputy Director of the Sales and Use Tax or Special Taxes Department, as appropriate. Thereafter, the Deputy Director responsible for the tax or fee law concerned will prepare and mail the person requesting reconsideration a letter containing his or her decision on the request for reconsideration.

(f) If the person requesting relief disagrees with the Deputy Director's decision under subdivision (e), the person may request an oral hearing before the Board. While a person requesting relief under this section does not have a right to an oral hearing before the Board, a request for an oral hearing on a request for relief may be granted. If a request for an oral hearing is granted, the Board may require that the person requesting relief participate in an appeals conference conducted under article 6 of this chapter prior to the oral hearing.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6592, 6593, 6593.5, 6596, 7657, 7657.1, 7658, 7658.1, 8877, 8878, 8878.1, 8879, 12636, 12637, 30282, 30283, 30283.5, 30284, 32255, 32256, 32256.5, 32257, 38452, 38453, 38454, 38455, 40102, 40103, 40103.5, 40104, 41096, 41097, 41097.5, 41098, 43157, 43158, 43158.5, 43159, 45155, 45156, 45156.5, 45157, 46156, 46157, 46157.5, 46158, 50112.2, 50112.3, 50112.4, 50112.5, 55044, 55045, 55046, 55046.5, 60209, 60210, 60211, 60212.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

**ARTICLE 5: CLAIMS (INQUIRIES) OF INCORRECT OR NON-DISTRIBUTION OF
LOCAL AND DISTRICT TAXES**

5250. FILING AND REVIEWING CLAIMS AND INQUIRIES REGARDING INCORRECT OR NON-DISTRIBUTION OF LOCAL AND DISTRICT TAXES.

(a) A claim or inquiry regarding the incorrect or non-distribution of local or district taxes must meet the requirements of California Code of Regulations, title 18, sections 1807 and 1828, respectively.

(b) The Board encourages the use of electronic means for the filing of claims and inquiries. A claim or inquiry, or supporting document, may be filed electronically under this section if it is transmitted to the Allocation Group in accordance with instructions provided on the Board's website at www.boe.ca.gov. A claim or inquiry, or supporting document, may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the:

Allocation Group
Audit Determination and Refund Section, MIC: 39
Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0039

The Chief of Board Proceedings may reject any claim or inquiry, or related document, filed in any manner that is not authorized by this section.

(c) A claim or inquiry will be acknowledged and reviewed in accordance with the procedures contained in California Code of Regulations, title 18, section 1807 or 1828.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code Sections 7202, 7203, 7261, 7262, 7270. Reference: Revenue and Taxation Code sections 7209, 7223.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 6: APPEALS CONFERENCES

5260. REFERRAL TO APPEALS DIVISION FOR APPEALS CONFERENCE; PREFERRED LOCATION FOR APPEALS CONFERENCE.

(a) If a petition for redetermination, petition for reconsideration, claim for refund, or request for innocent spouse or other equitable relief is referred to the Appeals Division for an appeals conference, Board Staff will contact the petitioner, claimant, or person requesting relief:

(1) To verify and update the person's contact information; and

(2) Inquire as to whether the person would prefer that the appeals conference be held at a specific location.

(b) Unless the petitioner, claimant, or person requesting relief indicates another preference, the appeals conference will be held in the district office that conducted the petitioner's audit, recommended denial of the claimant's claim for refund, or recommended denial of a person's request for relief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5261. NOTICE OF APPEALS CONFERENCE: RESPONSE TO NOTICE OF APPEALS CONFERENCE; SUBMISSION OF ADDITIONAL ARGUMENTS AND EVIDENCE; RECORDING APPEALS CONFERENCES.

(a) Board Proceedings Staff will prepare and mail the petitioner, claimant, or person requesting relief a Notice of Appeals Conference, which must include the date, time, and location of the appeals conference.

(b) Board Proceedings Staff will include a Response to Notice of Conference form with each Notice of Appeals Conference. A recipient of a Notice of Appeals Conference should complete and return the Response to Notice of Conference within 15 days of the date Board Proceedings Staff mailed the Notice of Appeals Conference.

(c) If the petitioner, claimant, person requesting relief, or other person described in section 5264 (other than the conference holder) has not already submitted all of its written arguments and documentary evidence prior to the issuance of the Notice of Appeals Conference, the arguments and evidence should be submitted to the Appeals Division within 15 days of the date Board Proceedings Staff mailed the Notice of Appeals Conference.

(d) Appeals conferences are not recorded. If the petitioner, claimant or person requesting relief would like to record the appeals conference the person must check the appropriate box on the Response to Notice of Conference and agree to provide a copy of any recording or transcript to the Appeals Division upon request.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5262. REQUESTS TO RESCHEDULE OR POSTPONE APPEALS CONFERENCES.

(a) The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of requests to postpone or reschedule an appeals conference. A request to postpone or reschedule an appeals conference may be filed electronically under this section if it is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov. Requests to postpone or reschedule an appeals conference may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the:

Board Proceedings Division, MIC: 97
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0097

The Chief of Board Proceedings may reject any request to postpone or reschedule an appeals conference filed in any manner that is not authorized by this section.

(b) Rescheduling. If there is a scheduling conflict for an appeals conference scheduled to be held in-person at headquarters, by videoconference or by telephone, the appeals conference may be rescheduled with the same conference holder generally within 30 days to accommodate the parties. At the discretion of the Chief Counsel, a second rescheduling may be allowed. Board Proceedings Staff may reschedule an appeals conference scheduled to be heard at a district office to a different district office, to headquarters, to a videoconference, or a telephone conference, or may postpone the appeals conference to the same district office as provided in subdivision (c).

(c) Postponement. Postponements are only applicable to appeals conferences that are scheduled at a district office. A postponement results in the case being placed back into the inventory of unassigned cases and reassigned when appeals conferences are subsequently held at such district office. If a party requests a postponement of an appeals conference to be held at a district office within 15 days after the date of the Notice of Appeals Conference sent by Board Proceedings Staff and has sufficient justification for requesting the postponement, the Chief of Board Proceedings may allow the postponement. If a party requests a postponement of the appeals conference later than 15 days after the date of the Notice of Appeals Conference, and can demonstrate extreme hardship (e.g., illness, death, disaster) for requesting the postponement, the Chief Counsel may allow the postponement. The Chief Counsel may only grant a party's second or subsequent request to postpone a previously postponed appeals conference if the party

requesting postponement can demonstrate extreme hardship, however, a previously postponed appeals conference may be rescheduled as provided in subdivision (b).

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5263. WAYS TO EXPEDITE AN APPEALS CONFERENCE.

(a) Board Proceedings Staff will schedule an appeals conference within 60 days of receiving written notice that the petitioner, claimant, or person requesting relief has agreed to:

(1) Attend an appeals conference at the Board's headquarter located at 450 N Street, Sacramento, California;

(2) Attend a video conference at one of the Board's district offices with the necessary equipment; or

(3) Participate in a telephone conference (Board Staff will place the call).

(b) Subdivision (a) only applies to written notices sent to the Board Proceedings Division at or before the due date of the Response to Notice of Conference. Such a written notice may be included in the Response to Notice of Conference.

(c) Once the deadline to file the written notice described in subdivision (a) has expired, Board Proceedings Staff will attempt to schedule an appeals conference as soon as practicable, if the petitioner, claimant, or person requesting relief notifies the Board Proceedings Division that it is willing to appear on shortened notice.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5264. CONDUCTING THE APPEALS CONFERENCE; PARTIES TO THE APPEALS CONFERENCE; NATURE OF THE APPEALS CONFERENCE; FAILURE TO APPEAR.

(a) Appeals Staff. The appeals conference will be held by Appeals Staff that has not had any prior involvement in the matter being discussed at the appeals conference. It is the responsibility of Appeals Staff to take a fresh look at the law and the facts and make Appeals Staff's own objective recommendation.

(b) Department Representative. Generally, Board Staff from the appropriate Department will be present at the appeals conference to provide the reasons for determining that a tax or fee is due, a claim for refund should be denied, or a request for relief should not be granted. Where appropriate, other Board Staff may be present at the appeals conference.

(c) Other Agency Representatives. A representative from another state agency may be present at appeals conferences where the tax or fee at issue is administered by the representative's agency. Such a representative will provide his or her agency's reasons for determining that the tax or fee at issue is due or should not be refunded.

(d) Nature of Appeals Conference. The appeals conference is not an adversarial proceeding; it is an informal discussion of the relevant facts and applicable laws. As such, it is important that all relevant information be presented to Appeals Staff.

(1) A party may submit additional written arguments and documentary evidence to Appeals Staff at any time before or during the appeals conference. (When possible, such arguments and evidence should be submitted within 10 days of receipt of a Notice of Appeals Conference.)

(2) If any party requests permission to submit additional written arguments and documentary evidence at the appeals conference, Appeals Staff may grant that party 15 days after the appeals conference to submit such arguments and evidence. If there is sufficient justification, Appeals Staff may also grant the requesting party an additional 15 days to submit additional written arguments and documentary evidence. Appeals Staff may not grant further extensions of time to submit additional written arguments and documentary evidence without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee.

(3) If a party submits additional written arguments and documentary evidence after the appeals conference, the other party will be granted 15 days to respond to such arguments and evidence.

(e) Failure to Appear. If a petitioner, claimant, or person requesting relief, or an authorized representative fails to appear at an appeals conference, Appeals Staff will still hold the appeals conference as scheduled.

(f) Once the appeals conference is concluded, Appeals Staff will take the petition, claim for refund, or request for relief under consideration.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7081, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5265. ISSUANCE AND CONTENTS OF A DECISION AND RECOMMENDATION.

(a) Within 90 days after the submission of any additional documents as authorized in section 5264, subdivision (d), Appeals Staff must issue a written report containing Appeals Staff's findings, called a Decision and Recommendation, copies of which must be sent to all parties. The Chief Counsel may allow

additional time beyond the 90 days to prepare the Decision and Recommendation. Both the request for additional time and the granting of additional time must be in writing and copies provided to all parties to the appeals conference.

(b) If a party does not appear at the appeals conference, the Decision and Recommendation will be based on all of the information in the file and any additional information provided by the parties, including information provided at the appeals conference.

(c) The Decision and Recommendation must include all of the following:

- (1) A concise statement of each issue raised by the petitioner, claimant, or person requesting relief;
- (2) The position of Board Staff in the appropriate Department on each issue raised by the petitioner, claimant, or person requesting relief;
- (3) A statement of the relevant law applicable to each issue raised by the petitioner, claimant, or person requesting relief;
- (4) A clear application of the relevant law to all the relevant information presented to Appeals Staff;
- (5) Appeals Staff's conclusions and recommendations after applying the relevant law to all of the relevant information; and
- (6) A summary of any additional information or documentation that was not presented to Appeals Staff, which might be relevant to a resolution of the issues raised by the petitioner, claimant, or person requesting relief.

(d) Any party receiving a Decision and Recommendation that discovers a significant factual error should contact Appeals Staff immediately. Appeals Staff may revise the Decision and Recommendation or issue a supplemental Decision and Recommendation to correct such errors.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5266. APPEALS STAFF RECOMMENDATIONS; REQUESTS FOR RECONSIDERATION; REQUESTS FOR ORAL HEARINGS.

(a) Appeals Staff may make the following recommendations in the Decision and Recommendation:

- (1) Deny the petition, claim, or request for relief in its entirety.
- (2) Grant the petition, claim, or request for relief in its entirety.
- (3) Grant the petition, claim, or request for relief in part.
- (4) That Board Staff in the appropriate Department re-audit the issues raised in the petition, claim, or request for relief as specified in the Decision and Recommendation.

(b) If the Decision and Recommendation recommends denial of the petition, claim, or request for relief in whole or in part, the petitioner, claimant or person requesting relief may:

- (1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief no later than 30 days after the Decision and Recommendation was issued.

(2) Disagree and file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. (A petitioner, claimant, or person requesting relief who has previously requested an oral hearing before the Board on the same petition, claim, or request for relief does not need to request an oral hearing at this time.)

(A) If an oral hearing is or was requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(B) If an oral hearing has been requested, but it is unclear whether the petitioner, claimant or person requesting relief disagrees with any portion of its Decision and Recommendation (or supplemental Decision and Recommendation) Board Staff will:

(i) Contact the petitioner, claimant, or person requesting relief to inquire as to the existence of such disagreement; and

(ii) Only schedule an oral hearing before the Board if the petitioner, claimant, or person requesting relief confirms that such disagreement exists.

(3) Agree with the Decision and Recommendation.

(c) If the Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part, the Department represented at the appeals conference, and any state agency represented at the appeals conference, may:

(1) File a written request for Appeals Staff to reconsider the petition, claim, or request for relief within 30 days after the Decision and Recommendation was issued.

(2) Agree with the Decision and Recommendation.

(d) Notwithstanding subdivision (c), if the Decision and Recommendation recommends that a petition, claim for refund, or request for relief be granted in whole or in part, any state agency represented at the appeals conference may file a written request for an oral hearing before the Board no later than 30 days after the Decision and Recommendation was issued. If an oral hearing is requested, Board Proceedings Staff will schedule an oral hearing before the Board, unless that request is waived. However, an oral hearing will not be provided if a request for a discretionary oral hearing is denied.

(e) If Appeals Staff receive a request for reconsideration, Appeals Staff will prepare a Supplemental Decision and Recommendation addressing any new information provided in the request for reconsideration, copies of which will be sent to all parties. Appeals Staff may also issue a Supplemental Decision and Recommendation as necessary to clarify or correct the information, analysis, or conclusion contained in a Decision and Recommendation or prior Supplemental Decision and Recommendation. A Supplemental Decision and Recommendation must satisfy all the requirements of section 5265, subdivision (c).

(f) If a Decision and Recommendation or Supplemental Decision and Recommendation recommends that a petition, claim, or request for relief be granted in whole or in part and the amount granted exceeds \$50,000, the recommendation will be sent to the Board for approval. Once the recommendation is submitted to the Board, the Board has discretion to make its own determination as to whether the petition, claim, or request should be granted and in what amount, and will do so without further documentation or testimony from the claimant, unless the claimant has requested and been granted an oral hearing before the Board regarding a partial denial of the same claim for refund.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151,

55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5267. ISSUANCE OF POST APPEALS CONFERENCE NOTICES.

(a) A Notice of Redetermination, Statement of Account, Notice of Refund, or Denial of Claim will be issued based on a Decision and Recommendation if:

(1) The petitioner, claimant, or person requesting relief and the department or other agency represented at the appeals conference agree with the Decision and Recommendation in its entirety;

(2) The petitioner, claimant, person requesting relief, or another agency represented at the appeals conference do not request an oral hearing before the Board; or

(3) The petitioner, claimant, or person requesting relief's request for a discretionary oral hearing is denied.

(b) Notwithstanding the provisions of subdivision (a), a Notice of Determination, Statement of Account, or Notice of Refund will not be issued based upon a Decision and Recommendation if:

(1) The Decision and Recommendation recommends granting a petition or claim for refund because the petitioner or claimant:

(A) Accepted a valid resale or exemption certificate; or

(B) Did not issue a valid resale or exemption certificate.

(2) Appeals Staff recommends imposing a related liability on:

(A) The person who issued the resale or exemption certificate described in subparagraph (A) of paragraph (1) of this subdivision; or

(B) The person who sold tangible personal property without receiving a valid resale or exemption certificate from the petitioner or claimant described in paragraph (1) of this subdivision;

(3) The person described in paragraph (2) has requested and been granted an oral hearing to contest Appeals Staff's recommendation; and

(4) The Chief Counsel determines that both matters should be consolidated for an oral hearing before the Board.

(c) For purposes of this section, references to "Decision and Recommendation" include Supplemental Decisions and Recommendations described in section 5266.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5268. PROCEDURES FOR CONDUCTING BOARD HEARINGS.

Board hearings will be conducted under the hearing procedures set forth in chapter 5 of this division.

Note: Authority cited: Government Code section 15606(a); Health and Safety Code sections 105190, 105310; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301, 60601; Public Utilities Code section 893. Reference: Revenue and Taxation Code sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350 and 60522.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 7: OPTIONAL BRIEFS FOR BOARD HEARINGS

5270. REQUIREMENTS FOR BRIEFS; BRIEFING SCHEDULE; NON-PARTY BRIEFS; ADDITIONAL BRIEFING.

(a) Optional Briefing. If a party to an Appeals Conference or person requesting relief is granted a hearing before the Board, the parties to such hearing may submit briefs in accordance with the rules set forth in this section. However, all briefs permitted to be filed under this section, other than briefs required by paragraphs (1) and (3) of subdivision (f), are optional.

(b) Requirements for Briefs.

(1) Timeliness. All briefs must be filed within the time periods provided in this section unless an extension is granted by the Chief Counsel in accordance with section 5271.

(2) Filing.

(A) Electronic Filing. The Board encourages the use of electronic means (i.e., facsimile, e-mail, etc.) for the filing of briefs and related documents. Briefs and related documents may be filed electronically under this section if they are transmitted to the Chief of Board Proceedings in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(B) Other Methods. Briefs and related documents may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to the Chief of Board Proceedings, at the following address:

Chief of Board Proceedings, MIC: 80
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0080

(C) The Chief of Board Proceedings may reject any brief or related document filed in any manner that is not authorized by this section.

(D) Notice. All briefs shall also be mailed or personally delivered to the other parties to the Board hearing, other than the Department represented at the appeals conference under section 5264, subdivision (b).

(3) Format. Briefs may not exceed:

(A) 30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced;

(B) 8 1/2" by 11" pages;

(C) Printed only on one side in a type-font size of at least 10 points or 12 characters per inch, or the equivalent;

(D) Excluding exhibits.

(4) The Chief Counsel may extend the page limit in paragraph (3) prior to the deadline for filing a brief based upon a written application setting forth circumstances that justify additional pages. In the event a brief does not conform to the form and page limits specified above, the submitted brief may be returned by the Chief of Board Proceedings. If a brief is so returned, the party will be given 10 days to comply with the form and page limits, and failure to do so within the 10-day period constitutes a waiver of the opportunity to submit the brief.

(c) Opening Briefs. Any party that requested a Board hearing under section 5266 may file an opening brief. An opening brief must contain a statement of the issues, a statement of the facts, and a discussion of the

legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs must be filed with the Chief of Board Proceedings no later than 55 days before the Board hearing.

(d) Reply Briefs. Any party to a Board hearing may file a reply brief in response to any opening brief. A reply brief must contain a statement of the issues, including relevant issues not raised by the opening brief, a statement of the facts as understood by the party submitting the reply brief, a discussion of the legal authorities, including relevant statutes and regulations, relied on by the party submitting the reply brief, and the assertion of any affirmative defenses. Reply briefs must be filed with the Chief of Board Proceedings no later than 35 days before the Board hearing.

(e) Response to Reply Brief. Any party to a Board hearing may file a response to a reply brief. A response to a reply brief may only address new issues or arguments raised in the reply brief to which it responds. A response to a reply brief must be filed with the Chief of Board Proceedings no later than 20 days before the Board hearing. The Chief of Board Proceedings must reject a response to a reply brief that exceeds the scope permitted by this subdivision.

(f) Additional Briefing.

(1) Post-Hearing Briefs. The Board may permit or require the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes and regulations, on any matters considered at a Board hearing. However, any post-hearing submissions are permitted only by order of the Board, on the subject matter specified, and within the time limits prescribed by the Board.

(2) Non-Party (Amicus) Briefs. A person that is not a party to a Board hearing may file a brief or letter with the Chief of Board Proceedings no later than 20 days before the Board hearing, and the parties may file responses to such brief or letter with the Chief of Board Proceedings no later than 10 days before the hearing. The response by any party may address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and then no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief must conform to the general requirements set forth in subdivision (b). A non-party brief or letter must contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding.

(3) Additional briefing. In extraordinary situations, the Board or Appeals Staff may request additional briefing from either party after the briefing period is ordinarily complete. Any such requested briefing must be filed within the time specified by the Board or Appeals Staff.

(g) Briefs Filed by Unrepresented Parties. Notwithstanding subdivisions (c), (d), and (e), a party who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief, may, at the discretion of the Board, submit a brief on the day of the hearing. A party who receives representation from a Board-approved pro bono or clinical program is considered to be unrepresented for purposes of this subdivision.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5271. EXTENSIONS OF TIME FOR FILING BRIEFS.

The Chief Counsel may grant a reasonable extension of time for the filing of any brief, upon a showing of reasonable cause. The request for an extension of time must be submitted in writing before the scheduled due date of any brief. If an extension of time is granted for the filing of any brief, the Chief Counsel will also grant an appropriate extension of time for filing a response to such brief.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6901, 6902, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46511, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

■ ■ ■

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals
Chapter 3: Property Taxes¹

ARTICLE 1: APPLICATION OF CHAPTER AND DEFINITIONS

5310. APPLICATION OF CHAPTER.

(a) This chapter applies to:

(1) Petitions for reassessment of unitary and nonunitary assessed value and escaped or excessive assessment of state-assessed properties (including petitions for abatement of penalty), petitions for correction of assessment allocation, petitions for reassessment of private railroad car value, and assessment factor hearings for state-assessed properties and private railroad cars;

(2) Applications for review, equalization, and adjustment of the assessment of publicly-owned lands and improvements under subdivision (g) of section 11 of article XIII of the California Constitution;

(3) Petitions objecting to the County-Assessed Properties Division's findings of ineligibility for an organizational clearance certificate under section 254.6 of the Revenue and Taxation Code, denials of claims for supplemental clearance certificates under Revenue and Taxation Code section 214, subdivision (g), and claims for the veterans' organization exemption under Revenue and Taxation Code section 215.1.

(4) Petitions filed with the Board by county assessors under Government Code section 15640 et seq.

(b) To the extent this chapter does not contain a specific rule or procedure, the rules and procedures in chapter 5 (commencing with section 5510) of this division apply. Where there is a conflict between chapter 5 and this chapter, the provisions of this chapter control.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

2. In subdivision (a)(3), changed veteran's to veterans'. Adopted 5-28-08; Effective 7-16-08.

5311. DEFINITIONS.

(a) The definitions contained in sections 5511 and 5512 of this division apply to this chapter unless otherwise indicated.

(b) The following definitions also apply to this chapter:

(1) "Appeals Conference" means a conference conducted by the Appeals Division, at which all parties are entitled to attend and at which issues raised in the petition are to be discussed, and if possible, resolved.

(2) "Appraisal Data Report" means, for state assesses subject to the provisions of article 2 of this chapter, a document and data sheet that accompany the Board's value determination required to be mailed to each state assessee between the first day of January and the first day of June of each year. The appraisal data report sets forth the State-Assessed Properties Division's value recommendation to the Board and a summary of the State-Assessed Properties Division's value indicators.

(3) "County-Assessed Properties Division" means the unit of the Board's Property and Special Taxes Department responsible for making determinations of eligibility for organizational clearance certificates and supplemental clearance certificates.

¹ Editorial change renaming subchapters to subarticles (Register 2008, No. 13.).

(4) "County-Assessed Properties Division" means the unit of the Board's Property and Special Taxes Department responsible for reviewing the assessment practices of county assessors under Government Code section 15640 et seq.

(5) A "Hearing Summary" is a written document intended to assist the Board in its consideration of and decision on a petition for which an oral hearing has been scheduled. The Hearing Summary will contain:

(A) Sufficient facts, contentions, law, and evidence to enable the Board to conduct an informed oral hearing;

(B) A discussion of the appeals conference, if one was held, including any additional information, stipulations, and resolutions resulting therefrom;

(C) The Appeals Division's analysis and comments, including questions to be posed to the parties; and

(D) Conclusions and recommendations of the Appeals Division after applying the relevant law to all of the relevant information.

(6) "Organizational Clearance Certificate" means a certificate issued by the Board under Revenue and Taxation Code section 254.6.

(7) "Party" means:

(A) For petitions described in section 5310, subdivision (a)(1), the petitioner and the State-Assessed Properties Division;

(B) For applications described in section 5310, subdivision (a)(2), the petitioner and the county assessor and tax agency whose assessment is questioned by a petition described in section 5310, subdivision (a)(2);

(C) For petitions described in section 5310, subdivision (a)(3), the petitioner and the County-Assessed Properties Division;

(D) For petitions described in section 5310, subdivision (a)(4), the petitioner and the County-Assessed Properties Division.

(8) "Petition" means a petition or application described in section 5310.

(9) "Petitioner" means an individual or entity that filed a petition described in section 5310, and the individual or entity's authorized representative where appropriate, and includes:

(A) A county, city, city and county, or municipal corporation that filed a petition with the Board under subdivision (g) of section 11 of article XIII of the California Constitution.

(B) The claimant of an Organizational Clearance Certificate for the property tax welfare exemption under Revenue and Taxation Code section 254.6 or Supplemental Clearance Certificate under Revenue and Taxation Code section 214, subdivision (g). For purposes of a petition from the denial of a Supplemental Clearance Certificate under Revenue and Taxation Code section 214, subdivision (g), the limited partnership is the petitioner.

(C) The county assessor and the taxing agency that filed a petition described in section 5310, subdivision (a)(4).

(10) "Respondent" means:

(A) For petitions described in section 5310, subdivision (a)(1), the State-Assessed Properties Division;

(B) For applications described in section 5310, subdivision (a)(2), the county assessor and tax agency whose assessment is questioned by a petition described in section 5310, subdivision (a)(2);

(C) For petitions described in section 5310, subdivision (a)(3), the County-Assessed Properties Division;

(D) For petitions described in section 5310, subdivision (a)(4), the County-Assessed Properties Division.

(11) "Sample finding" refers to the sampling of assessments from the county assessment roll under Government Code section 15640, subdivision (c).

(12) "Summary Decision" means a written document intended to assist the Board in its consideration of and decision on a petition without an oral hearing. The Summary Decision must contain:

(A) Sufficient facts, contentions, law, and evidence to enable the Board to evaluate the merits of the petition;

(B) A discussion of the appeals conference or other Appeals Division review, including any findings, stipulations, and resolutions resulting therefrom; and

(C) The Appeals Division's analysis and recommended decision.

(13) "Supplemental Clearance Certificate" means a certificate issued by the Board under Revenue and Taxation Code section 214, subdivision (g).

(14) "Tax and Fee Programs Division" means the unit of the Board's Legal Department responsible for representing the Department, as defined in Chapter 5, General Board Hearing Procedures, in responding to petitions described in section 5310, subdivision (a)(1), (a)(3), and (a)(4).

(15) "State-Assessed Properties Division" means the unit in the Board's Property and Special Taxes Department responsible for determining value indicators and recommending values of property under the Board's assessment jurisdiction and for administering the Board's state assessment responsibilities.

(16) "State-Assessed Properties Division's Analysis" means a written summary that sets forth an analysis of all of the issues raised in the petition and the State-Assessed Properties Division's recommendation.

(17) "Written Findings and Decision" means a document prepared by the Appeals Division that sets forth the Board's decision on a petition and the supporting reasons therefor.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

2. In subdivision (b)(7)(B), changed the cross reference from 5300 to 5310. Adopted 5-28-08; Effective 7-16-08.

5312. APPLICATION OF ARTICLES 2, 3, AND 4.

(a) State-Assessed Property and Private Railroad Cars. The provisions of article 2 of this chapter apply to petitions described in section 5310, subdivision (a)(1), and do not apply to any other petitions.

(b) Other Property Tax Petitions. The provisions of article 3 of this chapter apply to petitions described in section 5310, subdivision (a)(2), (a)(3), and (a)(4), and do not apply to any other petitions.

(c) General Board Hearing Procedures. The provisions of article 4 of this chapter apply to all petitions described in section 5310.

Note: Authority cited: Government Code section 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 2: PETITIONS FOR REASSESSMENT OF STATE-ASSESSED PROPERTY AND PRIVATE RAILROAD CARS

Subarticle 1: Application of Article

5321. APPLICATION OF ARTICLE.

This article applies to petitions for reassessment of unitary and nonunitary assessed value and escaped or excessive assessment of state-assessed properties (including petitions for abatement of penalty), petitions for correction of assessment allocation, petitions for reassessment of private railroad car value, and assessment factor hearings for state-assessed properties and private railroad cars.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 721, 721.5, 747, 759, 11251.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

Subarticle 2: Assessments and Assessment Factor Hearings

5322. INFORMATION AVAILABLE TO ASSESSEES; ASSESSMENT FACTOR HEARINGS.

(a) Each year, the State-Assessed Properties Division must perform capitalization rate studies and develop value indicators applicable to the valuation of the unitary property of each state assessee. The capitalization rate study, the value indicators, and all other appraisal data, calculations, and information developed or used by the State-Assessed Properties Division with respect to the valuation of the assessee's state-assessed property must be made available to the state assessee upon a written request to the Chief of the State-Assessed Properties Division.

(b) At the discretion of the Board, but generally at the Board's February meeting in Sacramento, the Board may annually hold Assessment Factor Hearings to receive public testimony on issues relating to capitalization rates and other factors affecting values of state-assessed property and private railroad cars. At least 30 days before the Assessment Factor Hearing date, state assessees and private railroad car taxpayers, or other persons wishing to be listed on the agenda, must notify the Chief of Board Proceedings if they intend to make an oral presentation at the hearing. Testimony of persons who do not notify the Chief of Board Proceedings as set forth above may be heard after those on the agenda have completed their oral presentations. The Board may place reasonable time limits on any presentation. In lieu of oral presentations, state assessees, private railroad car taxpayers, or other persons may submit written presentations to the Chief of Board Proceedings no later than the date of the hearing.

(c) At the discretion of the Board, but generally at the Board's April meeting in Sacramento, every state assessee may be given an opportunity to make an oral presentation to the Board in a public meeting regarding the value indicators to be used to value its state-assessed unitary property, or the value of its property. In lieu of an oral presentation, a state assessee may submit a written presentation to the Chief of Board Proceedings no later than the date of the hearing.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 110, 721, 721.5, 722, 723, 724, 725, 731, 746, 11251, 11291, 11292, 11293.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5322.5. VALIDITY OF ASSESSMENT.

Validity of Assessment or Taxes. The failure to receive any notice required to be given by the Board or the failure of the Board to complete any action by a date specified under this article does not affect the validity of an assessment or the validity of any taxes levied pursuant thereto.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code section 725.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

Subarticle 3: Contents of Petitions and Filing Deadlines

5323. TIME FOR FILING OF PETITIONS

(a) Unitary Value or Penalty. If a state assessee disagrees with the value or penalty determined by the Board as set forth in the Notice of Unitary Assessed Value, the assessee must file a Petition for Reassessment of Unitary Value by July 20 of the calendar year in which the Notice of Unitary Assessed Value was issued.

(b) Correction of Assessment Allocation. If a state assessee disagrees with an assessment allocation, the assessee must file a Petition for Correction of Assessment Allocation by July 20 of the calendar year in which the Notice of Assessment Allocation was issued.

(c) **Nonunitary Value or Penalty.** If a state assessee disagrees with the value or penalty determined by the Board as set forth in the Notice of Nonunitary Assessed Value, the assessee must file a Petition for Reassessment of Nonunitary Value by September 20 of the calendar year in which the Notice of Nonunitary Value was issued.

(d) **Escaped/Excessive Assessment.** If a state assessee disagrees with the value or penalty determined by the Board as set forth in the notice of escaped or excessive assessment, the assessee must file a petition for reassessment of escaped or excessive assessment no later than the date stated in the notice of escaped or excessive assessment mailed to the assessee at its address shown in the records of the Board.

(e) **Private Railroad Cars.**

(1) If an owner or assessee disagrees with a value or penalty determined by the Board, the owner or assessee must file a Petition for Reassessment of Private Railroad Car Value on or before September 20 (or October 5, if extended in writing by the Board or its designee) of the year in which the Notice of Private Railroad Car value is issued.

(2) If the Board fails to complete the private railroad car tax assessments on or before August 1 but completes the assessments in the following month under section 11651.5 of the Revenue and Taxation Code, the date for filing a petition for reassessment will be extended to October 20 (or November 4, if extended by the Board or its designee).

(3) For any assessment made outside the regular assessment period, the Petition for Reassessment must be filed on or before the 50th day following the notice of the assessment.

(4) If a petition is not timely received, the Board may consider the petition to be a claim for refund.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 731, 732, 741, 758, 11338, 11339, 11651.5.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5323.2. FILING REQUIREMENTS AND PROCEDURES FOR CONTESTING PRIVATE RAILROAD CAR JEOPARDY ASSESSMENTS.

The contesting of Private Railroad Car Tax jeopardy assessments is governed by the procedures set forth in chapter 2, article 2C of this division, except that if any of those procedures is inconsistent with Revenue and Taxation Code section 11351 et seq., the Revenue and Taxation Code sections control.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 11351, 11352, 11353, 11354.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5323.4. CONTENTS OF THE PETITION.

(a) All petitions must conform to the requirements in this section.

(b) A valid and complete petition must:

(1) Be in writing and state the name and address of the petitioner, the Board-adopted value, the petitioner's opinion of value, and the precise elements of the Board's valuation or penalty that petitioner is contesting (including, for nonunitary property, the property identification information and location).

(2) State whether the petition constitutes a claim for refund under Revenue and Taxation Code section 5148, subdivision (f).

(3) State the facts relied upon to support the requested change in value and include supporting documents, including appraisal reports, financial studies, and any other materials relevant to determining the value of the petitioner's property or reasons why the penalty should be abated.

(4) State whether any or all of the following are requested: an appeals conference, oral hearing, or Written Findings and Decision.

(5) Be signed by the petitioner or by an authorized representative. If the petition is signed by an agent, including an attorney licensed to practice law in the State of California, the agent must be authorized by the petitioner before the time the petition is filed. Both the petitioner's mailing address and the agent's mailing

address must be provided in the petition. The following language must be contained in the signature block of the petition:

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information herein, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief and that I am: (1) an officer, partner, or employee of the petitioner authorized to sign this petition; (2) an agent authorized by the petitioner; or (3) an agent who is any attorney licensed to practice law in the State of California, State Bar No. _____, who has been retained by the petitioner and has been authorized by the petitioner to file this petition.

(6) Be accompanied by a statement of authorization, if required as specified herein, or as specified in section 5323.8, Duplicate Petitions. If the petition is signed by an agent, other than an attorney licensed to practice law in the State of California, a statement of authorization, as described herein, or a power of attorney, as defined in chapter 5, General Board Hearing Procedures, is required. A statement of authorization must be in writing and must include the following information:

- (A) Name and address of the petitioner;
- (B) Petitioner's State Board of Equalization company identification number;
- (C) Name, address, and telephone and facsimile numbers of the agent;
- (D) Statement that the agent is authorized to file the petition and represent the petitioner in the petition; and
- (E) Signature of an officer, partner, or an employee who has been designated by petitioner in writing to sign such statement on behalf of the petitioner.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 741, 744, 747, 11340.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5323.6. SUBMISSION OF PETITION.

The original petition and supporting documents, together with 10 copies thereof, must be submitted by mail or in person to the Chief of Board Proceedings as provided in section 5335. A compact disc containing an electronic file conforming to the requirements of the Board Proceedings Division will be accepted in lieu of the copies if submitted with the original petition.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code section 741.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5323.8. DUPLICATE PETITIONS.

(a) In the event duplicate petitions are filed with the Chief of Board Proceedings, the Chief of Board Proceedings will determine which petition was authorized by petitioner.

(b) The Chief of Board Proceedings will contact the petitioner and/or the agent who filed the duplicate petitions by telephone, electronic mail, or facsimile machine and by registered or certified mail with return receipt, and will allow 10 days for a written response. In the event no written response is received after 10 days, the first petition received will be accepted and all other petitions will be rejected as duplicate petitions.

(c) For purposes of this regulation, "duplicate petition" means a petition filed by the petitioner, or its agent on its behalf, subsequent to the petition previously filed by or on behalf of the same petitioner for the same assessment year at issue. A subsequent petition that seeks to correct or supplement a previously filed petition will not be considered a duplicate petition for purposes of this regulation.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code section 741.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

Subarticle 4: Timeliness, Acceptance, and Dismissal of Petitions

5324. TIMELINESS OF PETITION.

(a) A petition is considered filed timely if it is addressed and transmitted to the address set forth in section 5335, or deposited personally at the headquarters office of the Board in Sacramento, no later than the date provided in section 5323 or, if an extension is received, section 5324.2.

(b) Timely performance and mailing date will be determined under the provisions of chapter 5 of this division.

(c) If the Chief of Board Proceedings determines that the Board requires original versions of documents filed by electronic or facsimile transmission, the original documents must be mailed or delivered to the address set forth in section 5335 or deposited personally at the headquarters office of the Board in Sacramento no later than the business day immediately following the electronic or facsimile transmission date.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 733, 741, 743, 746, 747, 758, 759, 11338, 11339.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5324.2. EXTENSIONS OF TIME.

(a) Filing of Petition. The Chief Counsel may extend the deadline to file a petition once for a period not to exceed 15 days, provided that the petitioner files a written or electronic request for the extension with the Chief of Board Proceedings no later than the due date of the petition.

(b) Supporting Documents. The Chief Counsel may grant a reasonable extension of time for reasonable cause to allow the petitioner to file supporting documentation, provided that the petitioner files a written or electronic request for the extension with the Chief of Board Proceedings no later than the due date of the petition.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 733, 746, 759, 11338.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5324.4. ACCEPTING OR REJECTING A PETITION.

(a) Determination that the Petition is Valid, Complete, and Timely. Upon receipt of the petition, the Chief of Board Proceedings will determine whether the petition is valid and complete, including whether the petition is timely. If any question arises as to the timeliness of a petition or whether a petition is valid and complete, the Chief of Board Proceedings will refer the petition to the Chief Counsel.

(b) Accepting the Petition. If the Chief of Board Proceedings, or the Chief Counsel, determines that the petition is valid and complete and that the petition is timely, or that there is a genuine, material issue relating to validity, completeness or timeliness, the Chief of Board Proceedings must accept the petition. The Chief of Board Proceedings will provide written acknowledgement of the acceptance to the petitioner and the Respondent.

(c) Issues relating to Validity, Completeness, and Timeliness. If the Chief Counsel determines that there is a genuine, material issue relating to validity, completeness, or timeliness, such matters will be considered to be at issue in the petition and will be decided by the Board.

(d) Rejecting the Petition. If the Chief of Board Proceedings and the Chief Counsel determine that the petition is not valid or complete or that the petition is not timely, and that there is no genuine, material issue relating to validity, completeness, or timeliness, the Chief of Board Proceedings must reject the petition. The Chief of Board Proceedings must provide written notification to the petitioner and the Respondent.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 733, 746, 759, 11338.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5324.6. SUBMISSION OF ADDITIONAL SUPPORTING DOCUMENTS BY PETITIONER.

(a) A petitioner's appraisal reports, financial studies, and other materials relevant to value may not be presented as evidence at the hearing unless such documents were provided to the Chief of Board Proceedings at the time the petitioner filed its petition or within a subsequent time extension, or was requested by and timely provided to the State-Assessed Properties Division or the Appeals Division. However, any Board Member may, before or at the hearing, permit or request the submission of evidence that was not previously filed with the Board.

(b) The State-Assessed Properties Division or the Appeals Division may also request additional evidence in order to evaluate the petitioner's opinion of value as set forth in its petition. The State-Assessed Properties Division or the Appeals Division may request such evidence in writing or by electronic means to the petitioner or its authorized representative and provide a deadline for the submission of such additional evidence by petitioner.

(c) All evidence, including both information and exhibits, must be accompanied by a declaration signed under penalty of perjury that the information contained in the petitioner's submitted evidence is true, correct, and complete to the best knowledge and belief of the person submitting the documents.

(d) Except as specified above, any submitted evidence received by the Chief of Board Proceedings from the petitioner subsequent to the filing of the petition and after the expiration of the deadline applicable to such submission will be returned to the petitioner by the Chief of Board Proceedings.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 741, 747, 759, 11340.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5324.8. DISMISSAL OF PETITION.

(a) A petition will be dismissed if:

- (1) The petition is not timely; or
- (2) The petitioner fails to timely cure the defects in an invalid or incomplete petition.

(b) The Chief of Board Proceedings will send written notice of the dismissal and supporting reasons therefore to the petitioner.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 733, 746, 759, 11338.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

Subarticle 5: Prehearing Meetings and Review of Petitions

5325. PREHEARING MEETING AND EXCHANGE OF INFORMATION BETWEEN STATE-ASSESSED PROPERTIES DIVISION, TAX AND FEE PROGRAMS DIVISION, AND PETITIONER.

(a) If requested by petitioner, the State-Assessed Properties Division and the Tax and Fee Programs Division will meet with the petitioner, either in person or by other means convenient to both parties, before the scheduled hearing date. The purpose of the meeting or meetings is to exchange relevant information and evidence, identify issues, and, if possible, enter into stipulations to resolve all or some of the issues.

(b) At any time, the State-Assessed Properties Division or the Tax and Fee Programs Division may request additional information from the petitioner to assist in resolving any issue raised by the petitioner.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 741, 747, 11340.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5325.4. PETITIONS RESOLVED BEFORE APPEALS DIVISION REVIEW.

With respect to all petitions as to which the petitioner and the State-Assessed Properties Division have agreed to a joint recommendation on a proposed resolution of all issues presented in the petition before the

petitioner's appeals conference or petitioner's reply brief, if no appeals conference is scheduled, the Tax and Fee Programs Division will prepare and submit the "State-Assessed Properties Division's Recommendation for Property Tax Petition" on the "Property Tax Matters Nonappearance Calendar" to the Chief of Board Proceedings. This recommendation will include a brief analysis of the petition and the related supporting documents, if any, as well as a statement confirming petitioner's agreement with such recommendation. The Board, however, is not required to adopt the recommendation or take the recommended Board action.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 741, 747, 11340.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5325.6. PREHEARING REVIEW OF ALL OTHER PETITIONS.

(a) The Appeals Division will review and prepare a Hearing Summary or Summary Decision for all petitions for which the Tax and Fee Programs Division does not prepare the recommendation described in section 5325.4.

(b) If there has been a partial or complete resolution of issues between petitioner and the State-Assessed Properties Division after the Appeals Division has issued its Hearing Summary or Summary Decision, the Appeals Division will draft a Revised Hearing Summary or Revised Summary Decision if time permits. The Revised Hearing Summary or Revised Summary Decision will state:

- (1) The issues which have been resolved;
- (2) Staff's revised analysis and/or recommendation; and
- (3) The issues remaining for decision by the Board, if any.

The case will remain on the agenda for Board action.

(c) At any time, the Appeals Division may request additional information or analysis from the petitioner or the State-Assessed Properties Division to assist in resolving any issue to be decided by the Board.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 741, 747, 11340.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

Subarticle 6: Briefing Schedules and Appeals Conferences

5326. GENERAL BRIEFING PROCEDURES FOR PETITIONS REVIEWED BY THE APPEALS DIVISION.

(a) A valid and complete petition as defined in section 5323.4 is considered the petitioner's opening brief.

(b) The State-Assessed Properties Division's Analysis is the State-Assessed Properties Division's written response to the petition.

(c) The petitioner's reply to the State-Assessed Properties Division's Analysis is optional.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 741, 747, 11340.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5326.2. BRIEFING SCHEDULE IF NO APPEALS CONFERENCE IS SCHEDULED.

(a) The State-Assessed Properties Division's Analysis will be submitted to the Chief of Board Proceedings no less than 45 days before the date on which the petition is scheduled for Board action.

(b) The petitioner may submit to the Chief of Board Proceedings a reply to the State-Assessed Properties Division's Analysis within 15 days after the Board Proceedings Division mails the State-Assessed Properties Division's Analysis to the petitioner. The petitioner may not submit new or additional evidence with its reply brief unless the State-Assessed Properties Division or Appeals Division previously requested new or additional information, but the petitioner may dispute or agree with the analysis and recommendations set forth in the State-Assessed Properties Division's Analysis.

(c) At least 10 days before the Board meeting date for which the petition is scheduled for Board action, the Appeals Division will submit a Hearing Summary or Summary Decision to the Chief of Board Proceedings.

(d) The Chief Counsel, upon a showing of reasonable cause, may grant an extension of the time provided in subdivisions (a), (b) and (c) above.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 741, 747, 11340.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5326.4. GENERAL APPEALS CONFERENCE PROCEDURES.

(a) An appeals conference will be held if requested by any of the following:

(1) By the petitioner in the petition;

(2) By the State-Assessed Properties Division no later than August 15 for petitions for reassessment of unitary value or October 15 for petitions for reassessment of nonunitary value;

(3) By the Assistant Chief Counsel of the Appeals Division; or

(4) By any Board Member.

(b) If an appeals conference is requested under subdivision (a)(3) or (a)(4), or for a petition for reassessment of nonunitary value under subdivision (a)(2), the Chief Counsel may modify the time periods provided in sections 5326.6 and 5327.

(c) An appeals conference will consider all issues raised in the petition. The purpose of an appeals conference is to obtain additional facts and evidence, obtain stipulations of fact, and narrow questions of law, in order to facilitate a more efficient and productive oral hearing or other Board action on the petition.

(d) The parties may attend the appeals conference in person or by telephone. The Appeals Division will attempt to conduct the appeals conference at a time and in a manner that is convenient for both the petitioner and the State-Assessed Properties Division.

(e) The petitioner and the State-Assessed Properties Division will be notified of the date, time, and place of the appeals conference in writing or by electronic mail or facsimile. The petitioner and the State-Assessed Properties Division must confirm their participation in writing or by electronic mail or facsimile. Once the parties agree to attend an appeals conference, the Appeals Division, at its discretion, may choose to hold the appeals conference at the stated date, time, and place even if one party does not appear.

(f) An attorney from the Appeals Division (conference holder) will conduct the appeals conference. To the extent practicable, the conference holder will ensure that the appeals conference is informal and non-adversarial in nature.

(g) The petitioner must be represented at the conference by an agent or employee who is thoroughly familiar with the facts and issues and has been authorized to represent the petitioner. The State-Assessed Properties Division will be represented by an appraiser.

(h) The conference holder will not record, videotape, or arrange for court reporting of the appeals conference. Any party may arrange for the appeals conference to be recorded or reported, at that party's expense. If the appeals conference is recorded or reported, a transcript must be made available to all participants. A recording or transcript of an appeals conference becomes a disclosable public record, if and when the petition being discussed on the record or transcript becomes a disclosable public record under chapter 5 of this division.

(i) If an appeals conference is scheduled, the Chief Counsel may shorten the time period provided in section 5327.4, subdivision (c), for issuing the notice of hearing.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 741, 747, 11340.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

2. In subdivision (a)(2) and (b), changed the word non-unitary to nonunitary. Adopted 5-28-08; Effective 7-16-08.

5326.6. SCHEDULING OF APPEALS CONFERENCE; BRIEFING SCHEDULE FOR PETITIONS FOR WHICH AN APPEALS CONFERENCE IS SCHEDULED.

(a) The Appeals Division will generally hold an appeals conference at least 30 days before the Board meeting at which the petition is scheduled for hearing or other Board action. The Appeals Division has broad discretion in determining the briefing schedules and the deadlines for submitting additional information.

(b) The State-Assessed Properties Division's Analysis must be submitted to the Chief of Board Proceedings no later than 35 days before the scheduled appeals conference date.

(c) The petitioner must submit to the Chief of Board Proceedings a reply to the State-Assessed Properties Division's Analysis within 15 days after the Board Proceedings Division mails the State-Assessed Properties Division's Analysis to the petitioner. The petitioner may not submit new or additional evidence with its reply brief unless the State-Assessed Properties Division or Appeals Division conference holder previously requested new or additional information, but the petitioner may dispute or agree with the analysis and recommendations set forth in the State-Assessed Properties Division's Analysis.

(d) The Appeals Division may request additional information or briefing to be provided by the petitioner or the State-Assessed Properties Division before, during, or after the Appeals conference.

(1) The Appeals Division should provide written confirmation of its request for additional information within two business days of the request.

(2) Unless otherwise permitted by the Appeals Division, all requested information must be provided no later than seven days after the date of the request.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 741, 747, 11340.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. In subdivision (d), renamed (i) to (1) and (ii) to (2). Adopted 5-28-08; Effective 7-16-08.

**Subarticle 7: Preparing Summaries, Scheduling Hearings, and
Distributing Documents**

5327. APPEALS DIVISION HEARING SUMMARY OR SUMMARY DECISION.

(a) Except as provided in subdivision (b), the Appeals Division will submit to the Chief of Board Proceedings a Hearing Summary or Summary Decision no later than 10 days before the Board hearing at which the petition is scheduled for hearing or other Board action.

(b) The Chief Counsel, upon a showing of reasonable cause, may grant an extension of a reasonable period of time for the issuance of the Hearing Summary or the Summary Decision. For purposes of this section "reasonable cause" includes, but is not limited to, an appeals conference being held less than 30 days before the hearing at which the petition is scheduled for hearing or other Board action.

(c) If prepared, a Revised Hearing Summary or Revised Summary Decision will be promptly submitted to the Chief of Board Proceedings by the Appeals Division.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 741, 747, 11651.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5327.4. ORAL HEARINGS – SCHEDULING OF HEARINGS.

(a) The Board must hear and decide all petitions for reassessment of unitary or nonunitary values and correction of allocated values by December 31 of the year in which the notice of assessment was issued and render its decisions no later than December 31 that year, except for petitions of escape assessments described in Revenue and Taxation Code section 758.

(b) The Board must hear petitions for reassessment of private railroad car values and render its decisions by January 31 of the year following the year in which the notice was issued. If the assessment was made outside the regular assessment period, the Board must hear the petition within 90 days of the date on which the petition was filed and render its decision within 45 days of the date of the hearing on the petition.

(c) If petitioner requests an oral hearing in its petition, the Chief of Board Proceedings will mail a Notice of Board Hearing to the petitioner at least 45 days before the scheduled hearing date.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 734, 741, 742, 748, 749, 758, 11338, 11339, 11341

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5327.6. DISTRIBUTION OF DOCUMENTS.

The Chief of Board Proceedings will promptly distribute the following documents to the petitioner, Board Members, the State-Assessed Properties Division, the Tax and Fee Programs Division, and the Appeals Division, as appropriate (the documents may be distributed separately):

- (a) Petition and supporting documentation;
- (b) State-Assessed Properties Division's Analysis;
- (c) Petitioner's Reply Brief, if any; and
- (d) Appeals Division's Hearing Summary or Summary Decision (and Revised Hearing Summary or Summary Decision, if prepared).

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 731, 732, 733, 741, 742, 743, 744, 746, 747, 748, 11338, 11339, 11340, 11353.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

Subarticle 8: Consolidation and Withdrawal of Petitions

5328. CONSOLIDATION OF PETITIONS INTO A SINGLE HEARING.

- (a) Multiple petitions may be consolidated for hearing or decision as provided in chapter 5 of this division.
- (b) If petitions are consolidated, the State-Assessed Properties Division's will draft a single Analysis to address and analyze the issues presented in all of the petitions. At the hearing, the Board may grant additional time, in equal amounts, to the petitioners' representative(s) and the State-Assessed Properties Division to present their respective cases. The Appeals Division will draft one Hearing Summary for all of the consolidated petitions.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code sections 731, 732, 733, 741, 742, 743, 744, 746, 747, 748.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5328.5. WITHDRAWAL OF A PETITION.

A petitioner may withdraw its petition at any time, up to and including the date of the scheduled Board hearing, by notifying the Chief of Board Proceedings in writing, including by electronic mail or facsimile.

Note: Authority cited: Government Code section 15606; Revenue and Taxation Code section 11651.
Reference: Revenue and Taxation Code section 733.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 3: OTHER PROPERTY TAX PETITIONS

Subarticle 1: Application of Article

5331. APPLICATION OF ARTICLE.

This article applies to:

- (a) Applications for review, equalization, and adjustment of the assessment of publicly-owned lands and improvements filed under subdivision (g) of section 11 of article XIII of the California Constitution;
- (b) Petitions objecting to the County-Assessed Properties Division's findings of ineligibility for an organizational clearance certificate under section 254.6 of the Revenue and Taxation Code, denials of claims for supplemental clearance certificates under Revenue and Taxation Code section 214, subdivision (g), and claims for the veteran's organization exemption under Revenue and Taxation Code section 215.1; and
- (c) Petitions filed with the Board by county assessors under Government Code section 15640 et seq.

Note: Authority cited: Article XIII, section 11 of the California Constitution; Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

Subarticle 2: Appeal of Assessment of Publicly-Owned Property – Contents of Applications, Filing Deadlines, and Board-Appraised Property

5332. TIME OF FILING OF APPLICATION.

(a) If any county, city, city and county, or municipal corporation wants to secure a review, equalization, or adjustment of the assessment of its property by the Board under subdivision (g) of section 11 of article XIII of the California Constitution, it must file an application with the Board on or before the later of:

(1) July 20 of the year in which the assessment is made if the assessment appealed is made during the regular period for such assessments; or

(2) Within two weeks after the completion and delivery by the county assessor of the local roll containing the assessment to the county auditor as provided in Revenue and Taxation Code section 617.

(b) If the assessment appealed is made outside the regular period for such assessments, the application must be filed with the Board within 60 days from the date the tax bill was mailed to the applicant.

(c) An application is filed timely if it is mailed to or received at the address provided in section 5335 within the time specified by this section.

(d) Failure to provide a timely application bars the applicant from relief under subdivision (g) of section 11 of article XIII of the California Constitution.

Note: Authority cited: Article XIII, section 11 of the California Constitution; Government Code section 15606. Reference: Revenue and Taxation Code section 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5332.4. CONTENTS OF APPLICATION.

Every application must:

- (a) Be in writing;
- (b) Be authorized by the governing body of the county, city, city and county, or municipal corporation seeking relief;
- (c) Include the official document authorizing the application;
- (d) Show the facts claimed to require action by the Board;

- (e) Include a statement of legal authorities, which includes relevant statutes and regulations;
- (f) Indicate whether a written findings and decision is desired; and
- (g) Be signed by petitioner or an authorized representative of the petitioner.

Note: Authority cited: Article XIII, section 11 of the California Constitution; Government Code section 15606. Reference: Revenue and Taxation Code section 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5332.6. SUBMISSION OF APPLICATION AND BOARD-APPRAISED PROPERTY.

(a) The application and supporting documents, including the proof of filing under subdivision (b), must be submitted by mail or in person to the Chief of Board Proceedings as provided in section 5335.

(b) A copy of the application, together with its separate statement of legal authorities, must also be filed by the applicant with the county assessor whose assessment is questioned and with the county board of supervisors. A proof of filing with the county assessor and the county board of supervisors must be enclosed with the application filed with the Board.

(c) Board-Appraised Property. If a property that has been appraised by the State-Assessed Properties Division becomes the subject of a proceeding under this article, both parties to the proceedings will be informed of the fact that the appraisal has been made.

(1) Each party, upon request, will have access to the appraisal records.

(2) Either party or the Board may call the State-Assessed Properties Division as a witness and may offer the appraisal records as an exhibit.

(d) A party desiring to call an employee of the State-Assessed Properties Division as a witness must notify the Chief of Board Proceedings of its intention to call such witness at least ten days before the hearing.

Note: Authority cited: Article XIII, section 11 of the California Constitution; Government Code section 15606. Reference: Revenue and Taxation Code section 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

Subarticle 3: Contents of Property Tax Welfare and Veterans' Organization Exemption Petitions and Filing Deadlines

5333. TIME FOR FILING OF PETITIONS.

(a) A petitioner has 60 days from the date of mailing of a final notice denying a claim for an Organizational Clearance Certificate or Supplemental Clearance Certificate or from the date of mailing of a notice of revocation of an Organizational Clearance Certificate or Supplemental Clearance Certificate to petition the Board for hearing on the denial of the claim or revocation of the certificate.

(b) A petition is timely if it is mailed to or received at the headquarters office of the Board within the time specified by subdivision (a).

Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 214, 254.6, 270.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

2. In subdivision (a), deleted comma after the third word "or" and in "Authority cited" changed the reference of 245.6 to 254.6. Adopted 5-28-08; Effective 7-16-08.

5333.4. CONTENTS OF PETITION.

The petition must:

- (a) Be in writing and state all of the specific grounds upon which qualification is claimed;
- (b) Include all documents the petitioner wishes the Board to consider in deciding the petition;
- (c) Indicate whether an oral hearing is desired;

(d) Indicate whether a written findings and decision is desired; and

(e) Be signed by petitioner or an authorized representative of the petitioner. The Chief Counsel may require the representative to demonstrate the representative's authority to represent the petitioner.

Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 214, 254.6, 270.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

2. In "Authority cited" changed the reference of 245.6 to 254.6. Adopted 5-28-08; Effective 7-16-08.

5333.6. SUBMISSION OF PETITION.

The original petition and supporting documents must be submitted by mail or in person to the Chief of Board Proceedings as provided in section 5335.

Note: Authority cited: Government Code section 15606. Reference: Revenue and Taxation Code sections 214, 254.6, 270.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

2. In "Authority cited" changed the reference of 245.6 to 254.6. Adopted 5-28-08; Effective 7-16-08.

Subarticle 4: Contents of Property Tax Sampling Program Petitions and Filing Deadlines

5334. TIME FOR FILING OF PETITIONS.

(a) Any county assessor may file a petition to appeal appraisals made within his or her county where differences have not been resolved before completion of the field review of county assessment procedures by the County-Assessed Properties Division.

(b) A petition must be filed within 30 days from the date that the Deputy Director of the Property and Special Taxes Department mails the final notice of sample finding to the county assessor.

(c) The determination contained within the final notice of sample finding becomes final if a petition is not filed within the time period provided in subdivision (b).

(d) A petition or supporting document is timely if it is mailed to or received at the address provided in section 5335 within the time specified in subdivision (b).

Note: Authority cited: Government Code sections 15606; 15640. Reference: Government Code sections 15640, 15645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5334.4. CONTENTS OF THE PETITION.

(a) The petition must:

(1) Be in writing;

(2) Identify the assessor's parcel number or assessment number and sample item number the county assessor is contesting;

(3) State the specific issue(s) being appealed and the specific adjustment requested;

(4) Indicate whether an oral hearing is desired; and

(5) Be signed by the county assessor or his or her authorized representative.

(b) The filing of a completed form provided by the Board for use as a petition will satisfy the requirements of subdivision (a).

(c) The county assessor is required to submit any supporting evidence with the petition.

Note: Authority cited: Government Code sections 15606; 15640. Reference: Government Code sections 15640, 15645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5334.6. SUBMISSION OF PETITION.

The petition and supporting documents must be submitted by mail or in person to the Chief of Board Proceedings as provided in section 5335.

Note: Authority cited: Government Code sections 15606; 15640. Reference: Government Code sections 15640, 15645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

**Subarticle 5: Filing and Distribution of
Petitions, Briefs, and Other Documents**

5335. SUBMISSION OF PETITIONS, BRIEFS, AND RELATED DOCUMENTS.

(a) Original petitions, briefs, and related documents must be submitted by mail or in person to the Chief of Board Proceedings, at the mailing address provided in chapter 5 of this division.

(b) Petitions, briefs, and related documents may be filed electronically under this section only if they are transmitted to and received by the Chief of Board Proceedings in accordance with instructions provided by the Board, including, but not limited to, the provisions of chapter 5 of this division.

(c) Applications and Other Submissions. For applications described in section 5310, subdivision (b), both the petitioner and the Respondent must file their submissions with the other party and enclose a proof of filing with the other party in each submission to the Board Proceedings Division.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code section 15640; Revenue and Taxation Code sections 214, 254.6, 270, 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5335.4. TIMELY PERFORMANCE; MAILING DATE.

Timely performance and mailing date will be determined under the provisions of section 5571 of this division.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5335.6. DISTRIBUTION OF DOCUMENTS.

The Board Proceedings Division will promptly distribute the petition, briefs, related documents, and the Hearing Summary or Summary Decision (and Revised Hearing Summary or Summary Decision, if prepared) to the petitioner, the Respondent, the Tax and Fee Programs Division, the Appeals Division, and the Board Members, as appropriate.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

Subarticle 6: Accepting, Rejecting, and Perfecting Petitions and Applications

5336. ACCEPTING OR REJECTING A PETITION.

(a) Determination that the Petition is Valid, Complete, and Timely. Upon receipt of the petition, the Chief of Board Proceedings will determine whether the petition is valid and complete, including whether the petition

is timely. If any question arises as to the timeliness of a petition or whether a petition is valid and complete, the Chief of Board Proceedings will refer the petition to the Chief Counsel.

(b) **Accepting the Petition.** If the Chief of Board Proceedings, or the Chief Counsel, determines that the petition is valid and complete and that the petition is timely, or that there is a genuine, material issue relating to validity, completeness or timeliness, the Chief of Board Proceedings must accept the petition. The Chief of Board Proceedings will provide written acknowledgement of the acceptance to the petitioner and the Respondent. Upon acceptance of a valid and complete property tax sampling program petition, the Chief of Board Proceedings will also notify the owner of the sampled property of the filing of the petition by the county assessor.

(c) **Issues relating to Validity, Completeness, and Timeliness.** If the Chief Counsel determines that there is a genuine, material issue relating to validity, completeness, or timeliness, such matters will be considered to be at issue in the petition and will be decided by the Board.

(d) **Rejecting the Petition.** If the Chief of Board Proceedings and the Chief Counsel determine that the petition is not valid or complete or that the petition is not timely, and that there is no genuine, material issue relating to validity, completeness, or timeliness, the Chief of Board Proceedings must reject the petition. The Chief of Board Proceedings will provide written notification to the petitioner and the Respondent.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5336.5. PERFECTING A PETITION.

(a) **Generally.** The briefing and resolution of a petition cannot begin until the petition is perfected. For purposes of this part, a petition is "perfected" if it contains substantially all the information required by section 5332.4, 5333.4, or 5334.4, whichever is applicable. In addition, a petition is not "perfected" until it contains sufficient information to identify and contact each petitioner or authorized representative, along with the signature of each petitioner or authorized representative.

(b) **Time to Perfect the Petition.** If the Chief of Board Proceedings receives an incomplete petition, the Chief of Board Proceedings will notify the petitioner in writing of the need to perfect the petition. The notification will be included in the acknowledgement letter issued under section 5336, subdivision (b). The notification will explain what information is necessary to perfect the petition.

(1) The petitioner must perfect the petition not later than 30 days from the date of the acknowledgement letter. The Chief of Board Proceedings may extend the deadline for perfecting the petition upon a showing of reasonable cause or upon written agreement by the parties. All parties must be notified in writing of any extension.

(2) Perfecting the petition is accomplished by submitting the information necessary to perfect the petition to the Chief of Board Proceedings.

(3) If the petitioner fails to perfect the petition within the 30-day period, or within any extension period granted by the Chief of Board Proceedings, the petition must be dismissed. All parties will be notified in writing of the dismissal.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

Subarticle 7: Prehearing Meetings and Briefing Schedules

5337. PREHEARING MEETING AND EXCHANGE OF INFORMATION BETWEEN RESPONDENT AND PETITIONER

(a) If requested by the petitioner with regard to a petition described in section 5310, subdivision (a)(3) or (a)(4), the Respondent and the Tax and Fee Programs Division will meet with the petitioner, either in person or by other means convenient to all parties, before the scheduled hearing date. The purpose of the meeting or meetings is to exchange relevant information and evidence, identify issues, and, if possible, enter into stipulations to resolve all or some of the issues.

(b) At any time, the Respondent or the Tax and Fee Programs Division may request additional information from the petitioner to assist in resolving any issue raised by the petitioner.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5337.4. BRIEFING: GENERAL REQUIREMENTS

(a) Submissions in the form of briefs are required for consideration of all petitions. The parties must adhere to the briefing schedules and other requirements set forth in this article.

(b) Upon receipt of a perfected petition, the Chief of Board Proceedings will provide written notification to each party that a perfected petition has been filed and that briefing will begin under the applicable briefing schedule, as determined by the Chief of Board Proceedings. The notification may be included, if appropriate, in the acknowledgement letter issued under section 5336, subdivision (b). Throughout the briefing schedule, the Chief of Board Proceedings will inform the parties of applicable deadlines, extensions, and other requirements by written notification, and will ensure that all parties receive copies of any correspondence.

(c) Any request to extend the period for filing a brief must be in writing. The Chief Counsel, in his or her discretion, may grant such a request upon a showing of reasonable cause or based upon the written agreement of the parties and the Appeals Division.

(d) The party filing a brief is responsible for submitting one copy of the brief and any supporting exhibits to the Board Proceedings Division. Upon receipt of any brief filed within the scope of the applicable briefing schedule, including any applicable deadlines and extensions, the Chief of Board Proceedings will provide written acknowledgement of receipt to all parties and provide each opposing party with a copy of the brief and any supporting exhibits.

(e) General Requirements. All briefs permitted to be filed under this section must follow the requirements listed below:

(1) Length.

(A) Not exceed 30 typed or handwritten, double-spaced 8 ½" by 11" pages, printed on one side only; or

(B) Not exceed 15 typed or handwritten, single-spaced 8 ½" by 11" pages, printed on one side only;

(2) Type-font size of at least 10 points or 12 characters per inch;

(3) The Table of Contents, Table of Authorities, and exhibits are not included in the page count;

(4) Exception. An exception to these requirements may be granted before the deadline for filing a brief. Exceptions may be requested by submitting a written request establishing reasonable circumstances that justify the necessity for additional pages to the Chief of Board Proceedings. It is at the discretion of the Chief Counsel or his or her designee to approve a request.

(f) The failure to file a brief within the scope of the applicable briefing schedule, including any applicable deadlines, extensions, and other requirements, is a waiver of the right to file that brief. Such a failure will also conclude the briefing schedule, except as otherwise provided in the applicable briefing schedule.

(g) Any individual or entity may file a non-party (amicus) brief regarding a petition or application described in section 5310, subdivision (a)(2), (a)(3), or (a)(4), subject to any generally applicable conditions of this section and the specific conditions of this subdivision.

(1) No individual or entity will be permitted to file more than one non-party brief. Briefs filed by unidentified individuals or entities will not be accepted.

(2) All non-party briefs must be filed before the conclusion of the applicable briefing schedule. However, the Board in its discretion may choose to accept for consideration a non-party brief filed after the conclusion of the applicable briefing schedule. For purposes of this paragraph, the conclusion of the applicable briefing schedule will be determined without regard to the filing of any non-party brief or reply thereto. There will not be any extensions of time for the filing of non-party briefs.

(3) If a non-party brief is filed, the Chief of Board Proceedings will acknowledge receipt of the brief and provide one copy to each party. Each party may file a reply to the non-party brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the non-party brief.

(4) The applicable briefing schedule is not concluded until the deadline for replying to all non-party briefs has passed.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5337.6. GENERAL BRIEFING SCHEDULE.

(a) Application. The briefing schedule in this section applies to all petitions and applications described in section 5310, subdivision (a)(2), (a)(3), and (a)(4).

(b) Opening Briefs.

(1) Petitioner's Opening Brief. The perfected petition is the Petitioner's Opening Brief.

(2) Respondent's Opening Brief. The Respondent must file an Opening Brief not later than 90 days from the date the Chief of Board Proceedings acknowledges receipt of the Petitioner's Opening Brief.

(c) Reply Briefs.

(1) Petitioner's Reply Brief. The petitioner must file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Respondent's Opening Brief. The Petitioner's Reply Brief, if filed, must address only points of disagreement with the Respondent's Opening Brief. Except as provided in paragraph (2) of this subdivision, the filing of the Petitioner's Reply Brief concludes the briefing schedule.

(2) Respondent's Reply Brief. The Respondent may file a Reply Brief only upon written permission from the Chief Counsel. The Respondent's Reply Brief, if filed, must address only points of disagreement with the Petitioner's Reply Brief.

(A) The Respondent will have 15 days from the date the Chief of Board Proceedings acknowledges receipt of the Petitioner's Reply Brief in which to file a written request for permission to file its Reply Brief.

(B) Upon receipt of the Respondent's written request, the Chief Counsel will determine whether additional briefing is necessary. Factors to be considered in determining whether additional briefing is necessary include, but are not limited to:

(i) Whether the Petitioner's Reply Brief raised new facts, arguments, or evidence that are essential to the resolution of the petition;

(ii) Whether the briefing filed to date has provided sufficient information for the Board to resolve the petition;

(iii) Whether the facts and issues in the petition are so complex as to require additional discussion or clarification.

(C) If the Chief Counsel determines that additional briefing is necessary, he or she will grant the Respondent's request to file a Reply Brief. The Respondent may file its Reply Brief not later than 30 days from the date on which its request is granted.

(D) If the Chief Counsel determines that additional briefing is not necessary, he or she will deny the Respondent's request to file a Reply Brief and the briefing process is concluded.

(3) Petitioner's Supplemental Brief. If the Respondent files a Reply Brief, the petitioner may file a Supplemental Brief not later than 30 days from the date the Chief of Proceedings acknowledges receipt of the Respondent's Reply Brief. The petitioner's Supplemental Brief, if filed, shall address only points of disagreement with the Respondent's Reply Brief. The filing of the petitioner's Supplemental Brief concludes the briefing schedule.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

**Subarticle 8: Appeals Division Review,
Prehearing Conferences, and Summaries**

5338. APPEALS DIVISION REVIEW.

(a) At the conclusion of the general briefing schedule under section 5337.6, the Appeals Division will review the record and determine whether the briefing on file adequately addresses all relevant factual and legal issues. If the briefing on file does not adequately address all relevant factual and legal issues, the Appeals Division may request additional briefing under section 5523.4.

(b) When the Appeals Division determines that all relevant factual and legal issues have been addressed and completes the appeals conference required by section 5338.4, the Appeals Division will notify the Chief of Board Proceedings that the petition is ready to be scheduled for an oral hearing.

(c) Upon notification from the Appeals Division that the petition is ready to be scheduled for an oral hearing, the Chief of Board Proceedings will schedule and notice an oral hearing under section 5522.6.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5338.4. APPEALS CONFERENCE.

(a) Purpose. The purpose of an appeals conference is to obtain additional facts and evidence, obtain stipulations of fact, and narrow questions of law, in order to facilitate a more efficient and productive oral hearing or other Board action on the petition.

(b) When to Hold an Appeals Conference. An appeals conference will be held for all petitions described in section 5310, subdivision (a)(2), (a)(3), and (a)(4). An appeals conference may be held only after the briefing schedule provided in section 5337.6 has concluded.

(c) Determining the Time and Location of the Appeals Conference. The Appeals Division will determine the time and location of the appeals conference. Consistent with workload constraints, the Appeals Division will attempt to ensure that the appeals conference is held at a time convenient to the petitioner. The appeals conference will ordinarily be held at the Board's headquarters in Sacramento, and may be conducted in person, by videoconference, by teleconference, or by means of a secure electronic connection. However, an in-person appeals conference may be held outside of Sacramento if the Chief Counsel determines that there is reasonable cause and that the Board has the resources to conduct an appeals conference outside of Sacramento.

(d) Notice and Scheduling. The Board Proceedings Division will schedule the appeals conference in accordance with information provided to it by the Appeals Division and will issue appropriate written notification to all parties.

(e) Conduct and Nature of the Appeals Conference. A conference holder assigned to the Appeals Division will conduct the appeals conference. To the extent practicable, the conference holder will ensure that the appeals conference is informal and non-adversarial in nature.

(f) Recording. The conference holder will not record, videotape, or arrange for court reporting of the appeals conference. Any party may arrange for the appeals conference to be recorded or reported, at that party's expense. If the appeals conference is recorded or reported, a copy of the transcript or recording must be promptly provided to all participants. A recording or transcript of an appeals conference becomes a disclosable public record, if and when the petition being discussed on the record or transcript becomes a disclosable public record under chapter 5 of this division.

(g) Additional Briefing and Evidence. If at any time before the submittal of the Hearing Summary or Summary Decision under section 5338.6, the Assistant Chief Counsel for the Appeals Division, or his or her designee, determines that insufficient briefing or evidence has been provided, the Appeals Division may request additional briefing or evidence from any party. The Appeals Division may set forth the order, deadlines, and conditions for briefing that it deems appropriate. The Appeals Division will administer any request made under this subdivision and may extend deadlines under this subdivision upon a showing of reasonable cause.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5338.6. PREPARING AND REVISING HEARING SUMMARIES.

(a) Preparing the Hearing Summary. The Appeals Division will prepare and submit a Hearing Summary to the Chief of Board Proceedings within 90 days after each appeals conference held under section 5338.4, or within any other period specified by the Chief of Board Proceedings, which provides the Appeals Division with at least 30 days to prepare and submit the Hearing Summary. The Chief Counsel may extend the time for submitting the Hearing Summary upon a showing of reasonable cause. Upon receipt of the Hearing Summary, the Chief of Board Proceedings will provide one copy to each party.

(b) If the petition is submitted for decision without an oral hearing before the Appeals Division prepares a Hearing Summary, the Appeals Division will prepare a Summary Decision under section 5343.

(c) If there has been a partial or complete resolution of issues between petitioner and the Respondent after the Appeals Division has issued its Hearing Summary or Summary Decision, the Appeals Division will draft a Revised Hearing Summary or Revised Summary Decision if time permits. The Revised Hearing Summary will state:

- (1) The issues which have been resolved;
- (2) The Appeals Division's revised recommendation; and
- (3) The issues remaining for decision by the Board, if any.

Note: Authority cited: Government Code sections 15606, 15640. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 1840.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 4: GENERAL BOARD HEARING AND NOTICE PROCEDURES

5340. RELATION TO GENERAL BOARD HEARING PROCEDURES.

The procedures in chapter 5 of this division apply to the conduct of oral Board hearings on petitions described in section 5310. To the extent this chapter does not set forth a specific rule or procedure, the rules and procedures set forth in chapter 5 will apply to this article. Where there is a conflict between chapter 5 and this chapter, the provision of this chapter control.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5341. ADDITIONAL BRIEFING.

(a) Staff Requests for Additional Briefing. If the Assistant Chief Counsel of the Appeals Division, or his or her designee, determines that insufficient briefing or evidence has been provided, the Appeals Division may request additional briefing or evidence from any party. The Appeals Division will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.

(b) Individual Board Member's Request for Additional Briefing. Any individual Board Member may contact the Appeals Division in order to request additional briefing or evidence from any party. The Appeals Division will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.

(c) Board Requests for Additional Briefing. If the Board determines that insufficient briefing or evidence has been provided, the Board may request additional briefing or evidence from any party. The Board will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. The Chief of Board Proceedings may extend deadlines set by the Board under this subdivision only upon a showing of extreme hardship and with the consent of the Board Chair.

(d) Timing of Request. A request under this section may be made during or after the applicable briefing schedule has concluded. Additional briefs or evidence provided in response to such a request are not subject to the requirements of the applicable briefing schedule.

(e) Notification of Board Chair. The Board Chair must be notified promptly of any request made under this section and may postpone the scheduling or hearing of an appeal.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5342. NOTICE OF HEARING

(a) Notice of Hearing. All parties to a petition or application will receive written notice of the date and time their petition is scheduled for oral hearing before the Board in accordance with chapter 5 of this division.

(b) Notice of Hearing on Applications. The notice of hearing for a hearing on an application described in section 5310, subdivision (a)(2), must contain a statement that, subject to the limitations of section 3, subdivision (b), and section 11 of article XIII, and of article XIII A of the California Constitution, the Board is required to determine the full cash value of the property that is the subject of the hearing and that this determination may exceed the value on which the assessment is based.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5343. SUBMISSION FOR DECISION WITHOUT ORAL HEARING.

(a) A petition will be submitted for decision based upon the written records on file and without an oral hearing under any of the following circumstances:

(1) The petitioner does not request an oral hearing or waives a requested oral hearing under chapter 5 of this division.

(2) The petitioner fails to respond to a Hearing Notice as provided in section 5522.6.

(b) Preparing the Summary Decision. Where a petition is submitted for decision without an oral hearing, the Appeals Division will prepare a Summary Decision summarizing the relevant facts and law and providing a recommendation for Board action.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 11251.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5344. NOTICE OF BOARD DECISIONS.

(a) The petitioner and all other parties to a petition or application will be notified in writing of the Board's decision in accordance with chapter 5 of this division.

(b) Decisions on Applications. When the review, equalization and adjustment of the taxable property of a county, city, city and county, or municipal corporation is completed, the Board will mail to the assessor, the county board of supervisors, the auditor of the taxing agency, and the taxpayer, a copy of the Board's findings and decision with respect to the assessment.

(c) Decisions on Property Tax Welfare and Veterans' Organization Exemption Claims. Written notice of the Board's decision on a petition described in section 5310, subdivision (a)(3), will also be sent to the county assessor for the county in which the property is located.

(d) Decisions on Property Tax Sampling Program Petitions. The Notice of Board Action issued with regard to a petition described in section 5310, subdivision (a)(4), will be mailed to the county assessor and the property owner by the Board Proceedings Division.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 1841, 11251.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5345. FINALITY OF BOARD ACTION; WRITTEN FINDINGS AND DECISION.

(a) The following provisions apply to all petitions filed under this chapter:

- (1) The decision of the Board upon a property tax petition is final.
- (2) The Board may not reconsider or rehear a petition.
- (3) The Board may modify a decision on a petition to correct a clerical error.

(b) If requested by the petitioner at any point before the commencement of the oral hearing or the commencement of the meeting at which the petition is scheduled for Board action, the Board will prepare and send to the petitioner a Written Findings and Decision according to the following procedure:

(1) After the Board has decided the petition, the Appeals Division will draft the Written Findings and Decision.

(2) The Chief of Board Proceedings will schedule the Written Findings and Decision for Board consideration.

(3) Once the Board adopts the Written Findings and Decision, the Chief of Board Proceedings will promptly mail a copy of the Written Findings and Decision to petitioner.

The petitioner may waive its right to its requested Written Findings and Decision any time before Board approval of the petitioner's Written Findings and Decision.

Note: Authority cited: Government Code sections 15606, 15640; Revenue and Taxation Code section 11651. Reference: Government Code sections 15640, 15645; Revenue and Taxation Code sections 214, 254.6, 270, 721, 721.5, 747, 759, 1840, 1841, 11251.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.



BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals
Chapter 4: Appeals from Actions of the Franchise Tax Board

ARTICLE 1: APPLICATION OF CHAPTER 4, DEFINITIONS, AND JURISDICTION

5410. APPLICATION OF CHAPTER 4.

(a) This chapter applies to appeals and petitions for rehearing filed with the Board pursuant to the:

(1) Administration of Franchise and Income Tax Laws. Part 10.2 of division 2 of the Revenue and Taxation Code.

(2) Senior Citizens Homeowners and Renters Property Tax Assistance Law. Chapter 1 and chapter 4 of part 10.5 of division 2 of the Revenue and Taxation Code.

(b) To the extent this chapter does not contain a specific rule or procedure, the rules and procedures in chapter 5 (commencing with section 5510) of this division apply. Where there is a conflict between chapter 5 and this chapter, the provisions of this chapter control.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5411. DEFINITIONS.

The definitions contained in sections 5511 and 5512 of chapter 5 apply to this chapter. In addition, the following definitions apply to this chapter and to any documents prepared pursuant to this chapter:

(a) The term “appellant” means an individual or business entity who files an appeal from an action of the Franchise Tax Board. The term “appellant” also includes multiple individuals or business entities filing an appeal jointly and, where appropriate, an authorized representative or representatives thereof.

(b) The term “respondent” means the Franchise Tax Board and, where appropriate, an authorized representative or representatives thereof.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5412. JURISDICTION.

(a) Appeals from the Franchise Tax Board. In General, the Board has jurisdiction to hear and decide a timely filed appeal under any of the following circumstances:

(1) The Franchise Tax Board mails a *Notice of Action* on a proposed deficiency assessment of additional tax, which may also include penalties, fees and interest.

(2) The Franchise Tax Board mails a *Notice of Action* on a proposed carryover adjustment.

(3) The Franchise Tax Board mails a *Notice of Action on Cancellation, Credit, or Refund*, or any other notice, which denies any portion of a perfected claim for a refund of tax, penalties, fees, or interest.

(4) The Franchise Tax Board fails to act on a claim for a refund of tax, penalties, fees, or interest, within six months after the claim is perfected with the Franchise Tax Board.

(5) The Franchise Tax Board mails a *Notice of Determination Not to Abate Interest*, or any other notice, that denies an abatement, in whole or in part, of paid or unpaid interest, under Revenue and Taxation Code section 19104.

(6) The Franchise Tax Board fails to act on a request for abatement of interest within six months after the request is filed with the Franchise Tax Board under Revenue and Taxation Code section 19104. This paragraph does not apply to requests for interest abatement made in connection with a protest or an appeal from a *Notice of Action* on a protest.

(7) The Franchise Tax Board mails a notice that disallows interest on a refund.

(8) The Franchise Tax Board mails any notice that grants or denies, in whole or in part, innocent spouse relief under Revenue and Taxation Code section 18533, subdivision (b) or (c), or section 19006, subdivision (c).

(9) The Franchise Tax Board mails a notice of determination, or fails to act within 90 days, on a petition for review of the Franchise Tax Board's finding of jeopardy.

(10) The Franchise Tax Board mails any notice that denies, in whole or in part, a claim for assistance under the Senior Citizens Homeowners and Renters Property Tax Assistance Law.

(b) Issues that will not be considered. The Board's jurisdiction is limited to determining the correct amount owed by, or due to, the appellant for the year or years at issue in the appeal. The Board has determined that it does not have jurisdiction to consider the following issues:

(1) Whether a California statute or regulation is invalid or unenforceable under the Federal or California Constitutions, unless a federal or California appellate court has already made such a determination.

(2) Whether a provision of the California Constitution is invalid or unenforceable under the Federal Constitution, unless a federal or California appellate court has already made such a determination.

(3) Whether a liability has been or should have been discharged in bankruptcy.

(4) Whether the Franchise Tax Board violated the Information Practices Act (Civil Code sections 1798 et seq.), the Public Records Act (Government Code sections 6250 et seq.), or any similar provision of the law.

(5) Whether the appellant is entitled to a remedy for the Franchise Tax Board's actual or alleged violation of any substantive or procedural right, unless the violation affects the adequacy of a notice, the validity of an action from which a timely appeal was made, or the amount at issue in the appeal.

(c) This section contains general rules governing the Board's jurisdiction. Changes in the law may expand or limit the Board's jurisdiction.

Note: Authority: Government Code section 15606; Revenue and Taxation Code section 19570; Article III, section 3.5 of the California Constitution. Reference: Revenue and Taxation Code sections 18533, 19006, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19322.1, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 2: HOW TO FILE AN APPEAL FROM THE FRANCHISE TAX BOARD

5420. APPEAL FILING REQUIREMENTS.

(a) Franchise and Income Tax Appeals. Except as provided in subdivision (b), every appeal from an action of the Franchise Tax Board must be in writing, must meet the formatting requirements of section 5430, subdivision (e), and must contain the following:

(1) The name of the appellant, or appellants, filing the appeal;

(2) The social security number or taxpayer identification number, whichever is applicable, of each appellant filing the appeal;

(3) The address and telephone number of each appellant and, if applicable, each appellant's authorized representative;

(4) The amount involved, including tax, penalties, fees, and interest (whichever is applicable);

(5) The year(s) involved;

(6) A copy of the Franchise Tax Board's notice from which the appeal is made, unless the Franchise Tax Board has failed to act on a claim for refund or a request for interest abatement, in which case the appellant must provide a copy of the claim for refund or request for interest abatement;

(7) The facts involved and the legal authorities upon which the appellant relies, including any relevant statutes, regulations, and judicial and administrative decisions;

(8) Any portion of the amount at issue conceded by the appellant; and

(9) The signature of each appellant who is filing the appeal, whether jointly or separately, or the signature of an authorized representative made on behalf of each appellant who is filing the appeal.

(b) Senior Citizens Homeowners and Renters Property Tax Assistance Appeals. Every appeal from the Franchise Tax Board's denial, in whole or in part, of a claim for assistance under the Senior Citizens Homeowners and Renters Property Tax Assistance Law must be in writing, must meet the formatting requirements of section 5430, subdivision (e), and must contain the following:

(1) The name of the appellant, or appellants, filing the appeal;

(2) The social security number or taxpayer identification number, whichever is applicable, of each appellant filing the appeal;

(3) The address and telephone number of the appellant and, if applicable, the appellant's authorized representative;

(4) The amount of property tax assistance claimed;

(5) The claim year(s) involved;

(6) A copy of the Franchise Tax Board's notice from which the appeal is made;

(7) The reasons the appellant is entitled to property tax assistance; and

(8) The signature of each appellant who is filing the appeal, whether jointly or separately, or the signature of an authorized representative made on behalf of each appellant who is filing the appeal.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5421. METHODS FOR DELIVERY OF WRITTEN DOCUMENTS AND CORRESPONDENCE.

(a) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of appeals, petitions for rehearing, briefs, and related documents and correspondence. Any document may be filed electronically pursuant to this section if an electronic copy of such document is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov.

(b) Appeals, petitions for rehearing, briefs, and related documents and correspondence may also be hand delivered to the Board's headquarters at 450 N Street in Sacramento, California, or mailed to:

Board Proceedings Division, MIC: 81
State Board of Equalization
450 N Street
PO Box 942879
Sacramento, CA 94279-0081

(c) Where Board Staff is required to provide written notification or written acknowledgement to one or more parties during the course of an appeal under this chapter, Board Staff will use mail or personal delivery, unless the party to whom the document is provided consents to delivery by facsimile or secure electronic means.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5422. TIME FOR FILING AN APPEAL.

An appeal is timely if it is mailed to or received by the Board Proceedings Division within the time period specified by the Revenue and Taxation Code, or as provided by this section.

(a) Statutory Deadlines. The Revenue and Taxation Code requires that any appeal must be filed:

(1) Not later than the later of: (A) 30 days from the date the Franchise Tax Board mails a *Notice of Action* upon the protest of an unpaid assessment, or (B) the date indicated on the notice as the deadline for filing an appeal.

(2) Not later than the later of (A): 30 days from the date the Franchise Tax Board mails a *Notice of Action* affirming a proposed carryover adjustment, or (B) the date indicated on the notice as the deadline for filing an appeal.

(3) Not later than 90 days from the date the Franchise Tax Board mails a *Notice of Action on Cancellation, Credit, or Refund*, or any other notice, that denies a claim for a refund of tax, penalties, fees, or interest.

(4) At any time, if the Franchise Tax Board failed to act on a claim for a refund of tax, penalties, fees, or interest within six months after the claim was perfected. However, if the Franchise Tax Board denies the claim for refund in writing, the appeal must be filed not later than 90 days from the date the Franchise Tax Board mails notice of the denial.

(5) Not later than 30 days from the date the Franchise Tax Board mails a *Notice of Determination Not to Abate Interest*, or any other notice, that specifically denies the abatement of **unpaid interest**.

(6) Not later than 90 days from the date the Franchise Tax Board mails a *Notice of Determination Not to Abate Interest*, or any other notice, that specifically denies the abatement of **paid interest**.

(7) At any time, if the Franchise Tax Board failed to act on a request to abate interest within six months after the request was filed. However, if the Franchise Tax Board denies a request to abate interest in writing, the appeal must be filed within the time period specified in paragraph (5) in the case of unpaid interest, or within the time period specified in paragraph (6) in the case of paid interest.

(8) Not later than 90 days from the date the Franchise Tax Board mails a notice that disallows interest on a refund.

(9) Not later than 30 days from the date the Franchise Tax Board mails any notice that grants or denies, in whole or in part, innocent spouse relief.

(10) Not later than 60 days from the earlier of: (A) the date the Franchise Tax Board mails a notice of its determination on a petition for review of a finding of jeopardy, or (B) the 91st day after a petition for review of a finding of jeopardy was filed with the Franchise Tax Board.

(11) Not later than 90 days from the date the Franchise Tax Board mails any notice that denies, in whole or in part, a claim for homeowners' or renters' property tax assistance.

(b) Extensions. Unless a statute or regulation provides otherwise, the statutory deadlines for filing an appeal are extended, pursuant to Code of Civil Procedure section 1013, as follows:

(1) Five days if the Franchise Tax Board's notice being appealed was mailed to an address within California;

(2) Ten days if the Franchise Tax Board's notice being appealed was mailed to an address outside California, but within the United States; or

(3) Twenty days if the Franchise Tax Board's notice being appealed was mailed to an address outside the United States.

(c) Date of Mailing. In the absence of other evidence, the filing date is the post-mark date, the date of delivery to a "delivery service" as defined in section 5511, or the date of receipt if the document is filed pursuant to section 5421, subdivision (a). If the last day for mailing or delivering an appeal falls on a Saturday, Sunday or holiday, the filing deadline is extended to the next business day.

Note: Authority: Government Code section 15606; Code of Civil Procedure section 1013. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5423. ACCEPTING OR REJECTING AN APPEAL.

(a) Determination of Jurisdiction and Timeliness. Upon receipt of the appeal, the Chief of Board Proceedings must determine whether the Board has jurisdiction to hear the appeal under section 5412, subdivision (b), including whether the appeal is timely under the provisions of section 5422. If any question arises as to the timeliness of an appeal or the Board's jurisdiction to hear an appeal, the Chief of Board Proceedings will refer the appeal to the Chief Counsel. The Chief of Board Proceedings and the Chief Counsel may request any relevant information from the Franchise Tax Board in order to perform their duties under this section.

(b) Accepting the Appeal. If the Chief of Board Proceedings or the Chief Counsel determines that the Board has jurisdiction to hear the appeal and that the appeal is timely, or that there is a genuine, material issue relating to jurisdiction or timeliness, the Chief of Board Proceedings must accept the appeal. The Chief of Board Proceedings then will provide written acknowledgement of the acceptance to the appellant and the Franchise Tax Board. The written acknowledgement will notify the appellant and the Franchise Tax Board of their rights and obligations under this chapter. The Chief of Board Proceedings will provide one copy of the appeal and any supporting documents to the Franchise Tax Board.

(c) Issues Relating to Jurisdiction and Timeliness. If the Chief Counsel determines that there is a genuine, material issue relating to jurisdiction or timeliness, such matters will be at issue in the appeal and will be decided by the Board.

(d) Rejecting the Appeal. If the Chief of Board Proceedings or the Chief Counsel determine that the Board does not have jurisdiction to hear the appeal or that the appeal is not timely, and that there is no genuine, material issue relating to jurisdiction or timeliness, the Chief of Board Proceedings must reject the appeal. The Chief of Board Proceedings then will notify the appellant and the Franchise Tax Board in writing of the rejection and the reasons therefor.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5424. PERFECTING AN APPEAL.

(a) Generally. The briefing and resolution of an appeal cannot begin until the appeal is perfected. For purposes of this chapter, an appeal is "perfected" if it contains substantially all of the information required by section 5420. In addition, an appeal is not "perfected" until it contains sufficient information to identify and contact each appellant or authorized representative, along with the signature of each appellant or authorized representative.

(b) Time to Perfect the Appeal. If the Chief of Board Proceedings accepts an appeal, and such appeal is not perfected, the Chief of Board Proceedings will notify the appellant in writing of the need to perfect the appeal. The notice will explain what information is necessary to perfect the appeal.

(1) The appellant must perfect the appeal not later than 90 days from the date of the notice. The Chief of Board Proceedings may extend the deadline for perfecting an appeal upon a showing of extreme hardship or upon written agreement by the parties. All parties will be notified in writing of any extension.

(2) Perfecting the appeal is accomplished by submitting the information necessary to perfect the appeal to the Chief of Board Proceedings.

(3) If the taxpayer fails to perfect the appeal within the 90-day period, or within any extension period granted by the Chief of Board Proceedings, the appeal will be dismissed. All parties will be notified in writing of the dismissal.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 3: BRIEFING SCHEDULES AND PROCEDURES

5430. GENERAL REQUIREMENTS.

(a) Generally. Submissions in the forms of briefs are required in all appeals from actions of the Franchise Tax Board. The parties to an appeal must adhere to the briefing schedules and other requirements set forth in this article. Unless otherwise provided, the rules contained in this section apply to all briefs and briefing schedules.

(b) Determining the briefing schedule; notification. Upon receipt of a perfected appeal, the Chief of Board Proceedings will provide written notification to each party that a perfected appeal has been filed and that briefing will begin under section 5431 or section 5432, whichever is applicable.

(1) If an appeal involves a jeopardy determination, the Chief Counsel will compose a suitable briefing schedule after due consideration of all the facts and circumstances of that appeal.

(2) The notification issued under this section may be included, if appropriate, in the acknowledgment letter issued under section 5423.

(3) Throughout the briefing schedule, the Chief of Board Proceedings will inform the parties of applicable deadlines, extensions, and other requirements by written notification, and will ensure that all parties receive copies of any correspondence.

(c) Extensions. Any request to extend the period for filing a brief must be in writing and must be made prior to the scheduled due date for that brief. Extensions and deferrals of briefing may be granted under the provisions of section 5522.8.

(d) Submission and acknowledgment. The party filing a brief is responsible for submitting one copy of the brief and any supporting exhibits to the Board Proceedings Division. Upon receipt of any brief filed within the scope of the applicable briefing schedule, including any applicable deadlines and extensions, the Chief of Board Proceedings will provide written acknowledgement of receipt to all parties and will provide each opposing party with a copy of the brief and any supporting exhibits.

(e) Formatting. All briefs must be no longer than 30 double-spaced 8½" by 11" pages, or 15 single-spaced 8 ½" by 11" pages, excluding any table of contents, table of authorities, and exhibits. All briefs must be handwritten or typed, and printed only on one side in a type-font size of at least 10 points or 12 characters per inch. The Chief of Board Proceedings may grant an exception to these requirements upon written request that establishes why an exception is necessary. If a brief is filed that does not comply with the requirements of this subdivision, the Chief of Board Proceedings may, in his or her discretion, return the brief to the filing party and grant 10 days in which to file a corrected brief. Failure to file a corrected brief within the 10-day period is a waiver of the right to file that brief. Except as otherwise provided in the applicable briefing schedule, that waiver will conclude the briefing schedule.

(f) Failure to file a brief. The failure to file a brief within the scope of the applicable briefing schedule, including any applicable deadlines, extensions, and other requirements, is a waiver of the right to file that brief. Except as otherwise provided in the applicable briefing schedule, that waiver will conclude the briefing schedule. However, the Board, in its discretion, may accept any documentary evidence and related arguments submitted at a hearing pursuant to section 5523.6.

(g) Non-party briefing. Non-Party (Amicus) Briefs may be filed, subject to any generally applicable conditions of this section and the specific conditions of this subdivision.

(1) Any individual or entity may file a Non-Party Brief, whether unsolicited or upon request of the Appeals Division. No individual or entity may file more than one Non-Party Brief, unless the Appeals Division specifically allows otherwise.

(2) Unless the Appeals Division specifically allows otherwise, all Non-Party Briefs must be filed prior to the conclusion of briefing under section 5431 or section 5432, whichever is applicable.

(3) If a Non-Party Brief is filed, the Chief of Board Proceedings will acknowledge receipt of the brief and provide one copy to each party. Each party may file a reply to the Non-Party Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Non-Party Brief.

(4) For purposes of articles 4 and 5 of this chapter, briefing is considered concluded when the deadline for replying to all unsolicited Non-Party Briefs has passed.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5431. GENERAL BRIEFING SCHEDULE.

(a) Application. The briefing schedule in this section applies to all appeals from actions of the Franchise Tax Board, unless the appeal involves an innocent spouse determination or a jeopardy determination.

(b) Opening Briefs.

(1) Appellant's Opening Brief. The perfected appeal is the Appellant's Opening Brief.

(2) Respondent's Opening Brief. The Franchise Tax Board may file an Opening Brief not later than 90 days from the date the Chief of Board Proceedings acknowledges receipt of the Appellant's Opening Brief.

(c) Reply Briefs.

(1) Appellant's Reply Brief. The appellant may file a Reply Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Respondent's Opening Brief. The Appellant's Reply Brief, if filed, may only address points of disagreement with the Respondent's Opening Brief. Except as provided in paragraph (2), the filing of the Appellant's Reply Brief concludes the briefing schedule.

(2) Respondent's Reply Brief. The Franchise Tax Board may file a Reply Brief only upon written permission from the Chief Counsel. The Respondent's Reply Brief, if filed, may only address points of disagreement with the Appellant's Reply Brief.

(A) The Franchise Tax Board has 15 days from the date the Chief of Board Proceedings acknowledges receipt of the Appellant's Reply Brief in which to file a written request to file its Reply Brief.

(B) Upon receipt of the Franchise Tax Board's written request, the Chief Counsel will determine whether additional briefing is necessary. Factors to be considered in determining whether additional briefing is necessary include, but are not limited to:

(i) Whether the Appellant's Reply Brief raised new facts, arguments, or evidence that are essential to the resolution of the appeal;

(ii) Whether the briefing filed to date has provided sufficient information for the Board to resolve the appeal; and

(iii) Whether the facts and issues in the appeal are so complex as to require additional discussion or clarification.

(C) If the Chief Counsel determines that additional briefing is necessary, he or she will grant the Franchise Tax Board's request to file a Reply Brief. The Franchise Tax Board may file its Reply Brief not later than 30 days from the date on which its request is granted.

(D) If the Chief Counsel determines that additional briefing is not necessary, he or she will deny the Franchise Tax Board's request to file a Reply Brief. That denial concludes the briefing schedule.

(3) Appellant's Supplemental Brief. If the Franchise Tax Board files a Reply Brief, the appellant may file a Supplemental Brief not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the Respondent's Reply Brief. The Appellant's Supplemental Brief, if filed, may only address points of disagreement with the Respondent's Reply Brief. The filing of the Appellant's Supplemental Brief concludes the briefing schedule.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5432. BRIEFING SCHEDULE FOR INNOCENT SPOUSE APPEALS.

(a) Application. The briefing schedule in this section applies to all appeals from notices that grant or deny, in whole or in part, innocent spouse relief pursuant to Revenue and Taxation Code sections 18533 or 19006.

(b) Definitions. For purposes of this section:

(1) The "Appealing Spouse" is the individual who files an appeal from the Franchise Tax Board's grant or denial, in whole or in part, of innocent spouse relief.

(2) The "Non-Appealing Spouse" is the individual with whom the Appealing Spouse filed a joint return for the year(s) at issue.

(3) The "requesting spouse" is the individual who requested relief from the joint and several liability imposed by Revenue and Taxation Code section 19006. The requesting spouse may be either the Appealing or Non-Appealing Spouse, depending upon whether the Franchise Tax Board granted or denied innocent spouse relief.

(4) The "non-requesting spouse" is the individual with whom the requesting spouse filed a joint return for the year(s) at issue. The non-requesting spouse may be either the Appealing or Non-Appealing Spouse, depending upon whether the Franchise Tax Board granted or denied innocent spouse relief.

(c) Special Rules and Procedures.

(1) If both spouses file timely appeals from the Franchise Tax Board's partial grant or partial denial of innocent spouse relief, then the appeals will be consolidated for briefing, hearing, and decision. Each spouse will be treated as an "Appealing Spouse" under this section and will have an equal opportunity to file briefs.

(2) If only one spouse files a timely appeal, then upon receipt of a perfected appeal from the Appealing Spouse, the Chief of Board Proceedings will provide one copy of the perfected appeal to the Non-Appealing Spouse and notify the Non-Appealing Spouse of his or her right to participate in the appeal.

(3) The Chief of Board Proceedings will use the best available information to contact the Non-Appealing Spouse.

(d) Protection of confidential information. The Board Proceedings Division will take reasonable steps, including redaction where appropriate, to ensure that the personal identifying information of one spouse is not provided to the other spouse. "Personal identifying information" includes, but is not limited to, a mailing address, electronic mail address, telephone number, and social security number.

(e) Opening Briefs.

(1) Appealing Spouse's Opening Brief. The Appealing Spouse's perfected appeal is the Appealing Spouse's Opening Brief.

(2) Respondent's Opening Brief. The Franchise Tax Board may file an Opening Brief not later than 90 days from the date the Chief of Board Proceedings acknowledges receipt of the Appealing Spouse's Opening Brief.

(3) Non-Appealing Spouse's Opening Brief. The Non-Appealing Spouse may file an Opening Brief not later than 90 days from the date of the notification of his or her right to participate in the appeal. The filing of the Non-Appealing Spouse's Opening Brief will join the Non-Appealing Spouse as a party to the appeal. The failure to file the Non-Appealing Spouse's Opening Brief within the time provided is a waiver of the right to participate in the appeal, unless such failure is due to reasonable cause.

(f) Reply Briefs.

(1) Appealing Spouse's Reply Brief. The Appealing Spouse may file a Reply Brief not later than 30 days from the later of:

(A) The date the Chief of Board Proceedings acknowledges receipt of the Respondent's Opening Brief;

(B) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse's Opening Brief, if one is filed; or

(C) The date on which it becomes known that the Non-Appealing Spouse will not file an Opening Brief.

The Appealing Spouse's Reply Brief, if filed, may only address points of disagreement with the Respondent's Opening Brief and the Non-Appealing Spouse's Opening Brief. Except as provided in paragraphs (2) and (3), the filing of the Appealing Spouse's Reply brief concludes the briefing schedule.

(2) Non-Appealing Spouse's Reply Brief. If the Appealing Spouse files a Reply Brief, the Non-Appealing Spouse may file a Reply Brief not later than 30 days from the date the Chief of Board

Proceedings acknowledges receipt of the Appealing Spouse's Reply Brief. The Non-Appealing Spouse's Reply Brief, if filed, may only address points of disagreement with the Appealing Spouse's Reply Brief.

(3) Respondent's Reply Brief. The Franchise Tax Board may file a Reply Brief only upon written permission from the Chief Counsel. The Respondent's Reply Brief, if filed, may only address points of disagreement with the Appealing Spouse's Reply Brief and the Non-Appealing Spouse's Opening and Reply Briefs. The rules in section 5431, subdivision (c)(2), apply to this paragraph. However, the 15-day period described in section 5431, subdivision (c)(2)(A), begins on the later of:

(A) The date the Chief of Board Proceedings acknowledges receipt of the Appealing Spouse's Reply Brief;

(B) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse's Reply Brief, if one is filed; or

(C) The date on which it becomes known that the Non-Appealing Spouse will not file a Reply Brief.

(4) If neither the Non-Appealing Spouse nor the Franchise Tax Board file a Reply Brief, the briefing schedule is concluded.

(5) Appealing Spouse's Supplemental Brief. If the Franchise Tax Board or the Non-Appealing Spouse file a Reply Brief, the Appealing Spouse may file a Supplemental Brief not later than 30 days from the later of:

(A) The date the Chief of Board Proceedings acknowledges receipt of the Non-Appealing Spouse's Reply Brief;

(B) The date the Chief of Board Proceedings acknowledges receipt of the Respondent's Reply Brief; or

(C) The date on which it becomes known that the Franchise Tax Board will not file a Reply Brief.

The Appealing Spouse's Supplemental Brief, if filed, may only address points of disagreement with the Respondent's Reply Brief and the Non-Appealing Spouse's Reply Brief. The filing of the Appealing Spouse's Supplemental Brief concludes the briefing schedule.

(g) Conformity with Federal Action. If, prior to the Board's decision on the appeal, any party to the appeal receives notification that the requesting spouse has been granted relief under Internal Revenue Code section 6015, the following procedures will apply in addition to the other procedures set forth in this section:

(1) The party who receives notification that relief has been granted under Internal Revenue Code section 6015 must submit proof of such notification to the Chief of Board Proceedings as soon as is practical.

(2) Regardless of whether the non-requesting spouse has joined the appeal, the Chief of Board Proceedings will notify the Franchise Tax Board and the non-requesting spouse of the federal grant of innocent spouse relief. Not later than 30 days from the date of the notification, the Franchise Tax Board and the non-requesting spouse may provide "information that indicates that relief should not be granted," as that phrase is defined in Revenue and Taxation Code section 18533, subdivision (i)(2).

(3) If the Franchise Tax Board and/or the non-requesting spouse provides information as permitted by paragraph (2) of this subdivision, the requesting spouse may file an additional brief. If the Franchise Tax Board did not provide information as permitted by paragraph (2), it may also file an additional brief. Additional briefs must be filed not later than 30 days from the date the Chief of Board Proceedings acknowledges receipt of the information described in paragraph (2) of this subdivision. Any brief filed pursuant to this paragraph may only address points of disagreement with the information described in paragraph (2) of this subdivision.

(4) If this subdivision becomes applicable after the briefing schedule has concluded, then briefing will be reopened for the purpose of complying with this subdivision and any hearing or decision will be postponed as appropriate.

(5) If this subdivision becomes applicable before the briefing schedule has concluded, then the briefing schedule will not be concluded until the requirements of this subdivision are satisfied.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19006, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5435. ADDITIONAL BRIEFING.

(a) Staff Requests for Additional Briefing. If the Assistant Chief Counsel of the Appeals Division, or his or her designee, determines that insufficient briefing or evidence has been provided, the Appeals Division may request additional briefing or evidence from any party. The Appeals Division will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.

(b) Individual Board Member's Request for Additional Briefing. Any individual Board Member may contact the Appeals Division in order to request additional briefing or evidence from any party. The Appeals Division will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. Deadlines under this subdivision may be extended upon a showing of reasonable cause.

(c) Board Requests for Additional Briefing. If the Board determines that insufficient briefing or evidence has been provided, the Board may request additional briefing or evidence from any party. The Board will determine the order, deadlines, and conditions under which any briefing or evidence must be submitted. The Chief of Board Proceedings may extend deadlines set by the Board under this subdivision only upon a showing of extreme hardship and with the consent of the Board Chair.

(d) Timing of Request. A request under this section may be made during or after the applicable briefing schedule has concluded. Additional briefs or evidence provided in response to such a request are not subject to the requirements of the applicable briefing schedule.

(e) Notification of Board Chair. The Board Chair must be notified promptly of any request made under this section and may postpone the scheduling or hearing of an appeal.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 4: REQUESTING AND SCHEDULING ORAL HEARINGS

5440. RIGHT TO REQUEST AN ORAL HEARING.

(a) Written Request Required. Every appellant has the right to an oral hearing before the Board upon written request, except as otherwise provided in any statute or regulation.

(1) In order to obtain an oral hearing, the appellant must file a written request not later than 30 days from the conclusion of briefing.

(2) Upon receipt of a timely request, the Chief of Board Proceedings will send written acknowledgment of the request to all parties pursuant to section 5522.1.

(3) An untimely request may be accepted and acknowledged if the Chief Counsel determines that the failure to make a timely request was due to reasonable cause.

(b) Innocent Spouse Appeals. Both the Appealing Spouse and the Non-Appealing Spouse, as those terms are defined in section 5432, subdivision (b), may request an oral hearing pursuant to subdivision (a) of this section. The Non-Appealing Spouse may request an oral hearing only if he or she has been joined as a party to the appeal. If such a request is made by either or both spouses, the Board typically will conduct one oral hearing and invite both spouses to appear. However, the Board will conduct separate oral hearings if:

(1) A court order would prohibit the spouses from appearing at the same hearing; or

(2) The Chief of Board Proceedings, after consulting with the Board Chair, determines that conducting one oral hearing is likely to be unsafe, disruptive, or unjust.

If the Board conducts separate oral hearings, the Board will not decide the appeal until both hearings have concluded.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5441. SUBMISSION FOR DECISION WITHOUT ORAL HEARING.

(a) Generally. If the appellant does not request an oral hearing under section 5440, or if the appellant does not respond to a Notice of Hearing under section 5522.6, the appeal will be submitted for decision based upon the written record on file and without an oral hearing.

(b) Innocent Spouse Appeals. If neither the Appealing Spouse nor the Non-Appealing Spouse request an oral hearing under section 5440, or neither spouse responds to their Notice of Hearing under section 5522.6, the appeal will be submitted for decision based upon the written record on file and without an oral hearing.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5442. APPEALS REVIEW; SCHEDULING THE ORAL HEARING

(a) If an oral hearing is granted under section 5440, the Appeals Division will review the record and determine whether the briefing on file adequately addresses all relevant factual and legal issues. If the briefing on file does not adequately address all relevant factual and legal issues, the Appeals Division may request additional briefing under section 5435, or may order a pre-hearing conference under section 5443, or both. When the Appeals Division determines that all relevant factual and legal issues have been addressed, then the Appeals Division will notify the Chief of Board Proceedings that the appeal is ready to be scheduled for an oral hearing.

(b) Upon notification from the Appeals Division that the appeal is ready to be scheduled for an oral hearing, the Chief of Board Proceedings will schedule and notice an oral hearing under section 5522.6.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5443. PRE-HEARING CONFERENCE.

(a) Purpose. The purpose of a pre-hearing conference is to obtain additional facts and evidence, obtain stipulations of fact, and narrow questions of law, in order to facilitate a more efficient and productive oral hearing.

(b) When to Hold a Pre-hearing Conference. A pre-hearing conference may be held only when an oral hearing has been granted under section 5440, and after the conclusion of briefing.

(1) The Appeals Division may order a pre-hearing conference in its discretion.

(2) Any party may make a written request for a pre-hearing conference. The request must be made not later than 15 days from the date on which the Chief of Board Proceedings acknowledges the request for an oral hearing. The Appeals Division may deny the request, with the approval of the Chief Counsel, if the Appeals Division determines that a pre-hearing conference is likely to be unproductive.

(3) The Board, at the oral hearing on the appeal, may order that a pre-hearing conference be held. In that circumstance, the hearing will be postponed until after the conclusion of the pre-hearing conference.

(c) Determining the Time and Location of the Pre-Hearing Conference. The Appeals Division will determine the time and location of the pre-hearing conference. Consistent with workload constraints, the Appeals Division will ensure that the pre-hearing conference is held at a time convenient to the appellant. The pre-hearing conference ordinarily must be held at the Board's headquarters in Sacramento, and may be conducted in person, by videoconference, by teleconference, or by means of a secure electronic connection. With good cause and with the approval of the Chief Counsel, an in-person pre-hearing conference may be held outside of Sacramento.

(d) Notice and Scheduling. The Board Proceedings Division will schedule the pre-hearing conference in accordance with information provided to it by the Appeals Division and will issue appropriate written notification to all parties. The parties will be given notice no less than 15 days before the date of the pre-hearing conference, provided that the notice period may be waived upon agreement by all parties.

(e) **Conduct and Nature of the Pre-hearing Conference.** An employee of the Appeals Division will conduct the pre-hearing conference. To the extent possible, the conference holder will ensure that the pre-hearing conference is informal and non-adversarial. However, if the conference holder determines that the pre-hearing conference is unproductive or that a party is uncooperative, the conference holder may terminate the pre-hearing conference.

(f) **Recording or Transcription.** The conference holder will not record, videotape, or transcribe the pre-hearing conference. Any party may arrange for the pre-hearing conference to be recorded or transcribed, at that party's expense. If a transcript is made, the transcript must be made available to all participants and it will become a public record. However, in all cases, statements made by participants during the pre-hearing conference are not binding upon the Board.

(g) **Additional Briefing and Evidence.** The holding of a pre-hearing conference does not prevent the Appeals Division from requesting additional briefing or evidence under section 5435.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5444. HEARING SUMMARY.

(a) **Definition.** For purposes of this chapter, a "Hearing Summary" is a written document intended to assist the Board in its consideration and decision of an appeal at an oral hearing. The Hearing Summary will contain:

(1) Sufficient facts, contentions, law, and evidence to enable the Board to conduct an informed oral hearing;

(2) The Appeals Division's recommendation for or against the adoption of a Formal Opinion under section 5452, if the Appeals Division determines that such a recommendation is appropriate;

(3) A discussion of the pre-hearing conference, if one was held, including any additional information, stipulations, and concessions resulting therefrom; and

(4) The Appeals Division's analysis and comments, including any questions posed to the parties.

(b) **Preparing the Hearing Summary.** Upon the scheduling and noticing of an oral hearing pursuant to section 5522.6, the Appeals Division will prepare a Hearing Summary and submit the Hearing Summary to the Chief of Board Proceedings. Except in the case of an appeal that involves a jeopardy determination, the Appeals Division will have at least 30 days in which to prepare and submit the Hearing Summary. The Chief Counsel may extend the time for submitting the Hearing Summary upon a showing of reasonable cause. Upon receipt of the Hearing Summary, the Chief of Board Proceedings will provide one copy to each party.

(c) **Citation prohibited.** Hearing Summaries may not be cited as precedent in any appeal or other proceeding before the Board.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 5: DECISIONS, OPINIONS, AND FRIVOLOUS APPEAL PENALTIES

5450. LETTER DECISIONS.

(a) **Definition.** A "Letter Decision" is a written decision that contains a short explanation of the reasons for the Board's decision on an appeal.

(b) **Preparing the Letter Decision.** Whenever the Board decides an appeal without adopting, or directing the preparation of, a Summary Decision or Formal Opinion, the Appeals Division will prepare a Letter Decision. The Appeals Division will provide one copy of a Letter Decision to each party not later than three business days from the date of the Board's decision.

(c) Date of Decision. The date on which the Board votes to decide the appeal is the date of the decision for purposes of this chapter.

(d) Citation prohibited. Letter Decisions may not be cited as precedent in any appeal or other proceeding before the Board.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5451. SUMMARY DECISIONS.

(a) Definition. A "Summary Decision" is a written decision that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal. The Summary Decision does not represent or reflect the Board's decision on the appeal unless and until it is adopted by the Board.

(b) Preparing the Summary Decision. The Appeals Division will prepare a Summary Decision when an appeal is submitted for decision under section 5441, or when the Board orders the preparation of a Summary Decision. The Appeals Division must submit the Summary Decision to the Board Proceedings Division either upon completion or within any deadline set by the Board. The Chief Counsel may extend the time period for submitting the Summary Decision upon a showing of reasonable cause and with the consent of the Board Chair.

(c) Adoption; Date of Decision. When the appeals Division prepares a Summary Decision, the Decision will be submitted to the Board for adoption as a non-appearance matter and remains confidential until adopted by the Board. The date on which the Board votes to adopt the Summary Decision, or votes to decide the appeal without adopting the Summary Decision, is the date of the Board's decision for purposes of this chapter.

(d) Citation prohibited. Summary Decisions may not be cited as precedent in any appeal or other proceeding before the Board.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5452. FORMAL OPINIONS.

(a) Definition. A "Formal Opinion" is a written decision that contains the findings of fact and conclusions of law that form the basis of the Board's decision on an appeal and which is intended to set precedent. The Formal Opinion does not represent or reflect the Board's decision on the appeal unless and until it is adopted by the Board.

(b) Preparing the Formal Opinion. The Appeals Division will prepare a Formal Opinion when an appeal is submitted for decision under section 5441 and the Appeals Division determines that a Formal Opinion might be appropriate, or when the Board orders the preparation of a Formal Opinion. The Appeals Division must submit the Formal Opinion to the Board Proceedings Division either upon completion or within any deadline set by the Board. The Chief Counsel may extend the time period for submitting the Formal Opinion upon a showing of reasonable cause and with the consent of the Board Chair.

(c) Notice of Formal Opinion. When the Board orders the Appeals Division to prepare a Formal Opinion, the Appeals Division will promptly send a written notice to the parties that contains the following:

(1) A brief explanation of any Board action taken on the appeal, including any decision on the outcome of the appeal and the order to prepare a Formal Opinion;

(2) A statement that the time period for filing a Petition for Rehearing will not begin until the Board adopts the Formal Opinion, or until the Board otherwise decides the appeal without adopting the Formal Opinion; and

(3) If the appeal involves an unpaid liability that is subject to the accrual of interest, a statement that interest will continue to accrue until the liability is paid in full.

(d) Adoption; Date of Decision. When the Appeals Division prepares a Formal Opinion, the Opinion will be submitted to the Board for adoption as a non-appearance matter and remains confidential until adopted by the Board. The date on which the Board votes to adopt the Formal Opinion, or votes to decide the appeal without adopting the Formal Opinion, is the date of the Board's decision for purposes of this chapter.

(e) Reasons for Issuing a Formal Opinion. In determining whether a Formal Opinion might be appropriate, the following factors are considered:

(1) Whether the Opinion would establish a new rule of law, apply an existing rule to a set of facts significantly different from those stated in published opinions, or modify or repeal an existing rule;

(2) Whether the Opinion would resolve or create an apparent conflict in the law;

(3) Whether the Opinion would involve a legal issue of continuing public interest; and

(4) Whether the Opinion would make a significant contribution to the law by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

The list of factors in this subdivision is not intended to be exclusive. The Board and the Appeals Division may consider other relevant factors.

(f) Citation permitted. Any Formal Opinion may be cited as precedent in any appeal or other proceeding before the Board, unless the Opinion has been depublished, overruled, or superseded.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5454. FRIVOLOUS APPEAL PENALTY.

(a) Generally. If the Board determines that an appeal is frivolous or is maintained for the purpose of delay, the Board may impose a penalty, under Revenue and Taxation Code section 19714, on the appellant or appellants that filed the appeal. The Board may impose a frivolous appeal penalty on its own or upon the recommendation of the Appeals Division.

(b) Factors Considered. The following factors are considered in determining whether, and in what amount, to impose a frivolous appeal penalty:

(1) Whether the appellant is making arguments that the Board, in a Formal Opinion, or courts have rejected;

(2) Whether the appellant is making the same arguments that the same appellant made in prior appeals;

(3) Whether the appellant filed the appeal with the intent of delaying legitimate tax proceedings or the legitimate collection of tax owed;

(4) Whether the appellant has a history of filing frivolous appeals or failing to comply with California's tax laws.

The list of factors in this subdivision is not intended to be exclusive. The Board and the Appeals Division may consider other relevant factors.

Note: Authority: Government Code section 15606; Revenue and Taxation Code section 19714. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 19714, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 6: PETITIONS FOR REHEARING AND REHEARINGS

5460. FINALITY OF DECISION.

(a) Finality. The Board's decision under article 5 of this chapter becomes final 30 days from the date of the decision unless, within that 30-day period, a party to the appeal files a Petition for Rehearing.

(b) Finality Independent of Notice. The finality of the Board's decision is not dependent upon the date of any notice of the decision. In addition, the decision may become final even though Board Staff fails to send, or a party fails to receive, notice of the decision.

(c) Number of Filings. The filing of a Petition for Rehearing by one party does not prevent the filing of a Petition for Rehearing by another party, provided that each Petition for Rehearing is filed on time. However, no party may file more than one Petition for Rehearing.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5461. PETITIONS FOR REHEARING.

(a) Definitions. For purposes of this article:

(1) The "Filing Party" is the party who files a Petition for Rehearing.

(2) The "Non-Filing Party" is the party who does not file a Petition for Rehearing.

(b) Time for Filing. A Petition for Rehearing is timely if it is mailed within the 30-day period described in section 5460, subdivision (a). The date of mailing is determined under section 5422, subdivision (c).

(c) Format and Contents of the Petition for Rehearing. Every Petition for Rehearing must be in writing, must meet the formatting requirements of section 5430, subdivision (e), and must contain the following:

(1) The name or names of the party or parties filing the Petition for Rehearing;

(2) The address and telephone number of each party and, if applicable, each party's authorized representative;

(3) Any portion of the amount at issue conceded by the party;

(4) The signature of each party or the signature of an authorized representative made on behalf of each party filing the Petition for Rehearing; and

(5) All the facts and legal authorities necessary to:

(A) Identify an irregularity in the Board's proceedings that prevented the fair consideration of the appeal;

(B) Identify an accident or surprise that occurred, which ordinary caution could not have prevented;

(C) Identify newly discovered, relevant evidence, which the Filing Party could not have reasonably discovered and provided prior to the Board's decision; or

(D) Demonstrate there was insufficient evidence to justify the Board's decision or the decision is contrary to law.

(d) Accepting or Rejecting the Petition for Rehearing.

(1) Upon receipt of a Petition for Rehearing, the Chief of Board Proceedings must determine whether the Petition for Rehearing is timely. If any question arises as to the timelines of a Petition for Rehearing, the Chief of Board Proceedings will refer the Petition to the Chief Counsel.

(2) If the Chief of Board Proceedings or the Chief Counsel determines that the Petition for Rehearing is timely, the Chief of Board Proceedings must accept the Petition for Rehearing. The Chief of Board Proceedings then will notify all parties in writing of the acceptance. The notice will explain each party's rights and obligations under this article. The Chief of Board Proceedings will provide one copy of the Petition for Rehearing and any supporting documents to the Non-Filing Party.

(3) If the Chief of Board Proceedings or the Chief Counsel determines that the Petition for Rehearing is not timely, the Chief of Board Proceedings must reject the Petition for Rehearing. The Chief of Board Proceedings then will notify all parties in writing of the rejection and the reasons therefor.

(e) Perfecting the Petition for Rehearing.

(1) The briefing and resolution of a Petition for Rehearing cannot begin until the Petition for Rehearing is perfected. A Petition for Rehearing is "perfected" if it contains substantially all of the information required by subdivision (c). A Petition for Rehearing is not perfected until it contains sufficient information to identify and contact each Filing Party or authorized representative, along with the signature of each Filing Party or authorized representative.

(2) If a timely Petition for Rehearing is not perfected, the Chief of Board Proceedings will notify the Filing Party in writing of the need to perfect the Petition for Rehearing. That notice will explain what information is necessary to perfect the Petition for Rehearing.

(A) The Filing Party must perfect the Petition for Rehearing not later than 30 days from the date of the notice. The Chief of Board Proceedings may extend the deadline for perfecting a Petition for Rehearing upon a showing of extreme hardship or upon written agreement by the parties. All parties will be notified in writing of any extension.

(B) Perfecting the Petition for Rehearing is accomplished by submitting the information necessary to perfect the Petition for Rehearing to the Chief of Board Proceedings.

(C) If the Filing Party fails to perfect the Petition for Rehearing within the 30-day period, or within any extension period granted by the Chief of Board Proceedings, the Petition for Rehearing will be rejected. All parties will be notified in writing of the rejection.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5462. BRIEFING ON PETITION FOR REHEARING.

(a) Subdivisions (b)(3), (c), (d), (e), (f), and (g) of section 5430 apply to the administration of this section and to any documents filed under this section. When applied to this section, provisions of section 5430 must be interpreted within the context of this section.

(b) Briefing Schedule.

(1) Unless otherwise directed by Board Staff, the Filing Party will not be permitted to submit any additional briefing after the submission of a perfected Petition for Rehearing.

(2) Not later than 30 days from the date on which the Chief of Board Proceedings acknowledges receipt of a perfected Petition for Rehearing, the Non-Filing Party may file a Reply to the Petition for Rehearing.

(3) If there is more than one Filing Party, then each party may file a Reply to each Petition for Rehearing under the requirements of paragraph (2).

(c) Additional Briefing. This section does not prevent a request for additional briefing under section 5435.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5463. DECISIONS ON PETITIONS FOR REHEARING.

(a) Definition. A "Decision on Petition for Rehearing" is a written decision that contains the findings of fact and conclusions of law that form the basis of the Board's decision to grant or deny a rehearing. The Decision on Petition for Rehearing does not represent or reflect the Board's decision to grant or deny the rehearing unless and until it is adopted by the Board

(b) Preparing the Decision on Petition for Rehearing. Upon the conclusion of briefing under section 5462, the Appeals Division will prepare a Decision on Petition for Rehearing. Upon completion, the Appeals Division will submit the Decision on Petition for Rehearing to the Chief of Board Proceedings.

(c) Adoption; Date of Decision. The Decision on Petition for Rehearing will be submitted to the Board for adoption as a non-appearance matter and remains confidential until adopted by the Board.

(1) If the Board grants a Petition for Rehearing, then the Board's decision under article 5 of this chapter will be held in abeyance pending resolution of the rehearing. The Board, in its discretion, may limit the scope of the rehearing.

(2) If the Board denies a Petition for Rehearing, then the Board's decision to deny the petition becomes final 30 days from the date on which the Board voted to deny the rehearing.

(d) Citation. Decisions on Petition for Rehearing may not be cited as precedent in any appeal or other proceeding before the Board, unless the Board adopts the Decision on Petition for Rehearing as a Formal Opinion.

Note: Authority: Government Code section 15606. Reference: Code of Civil Procedure section 657; Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5464. BRIEFING ON REHEARING.

(a) Section 5430, subdivisions (b)(3), (c), (d), (e), (f), and (g) apply to the administration of this section and to any documents filed under this section. When applied to this section, provisions of section 5430 must be interpreted within the context of this section.

(b) Briefing Schedule; Single Petition Granted. If the Board grants a single Petition for Rehearing, the following briefing schedule applies:

(1) Filing Party's Opening Brief. The Filing Party may file an Opening Brief not later than 30 days from the date on which the Board voted to grant the Petition for Rehearing.

(2) Non-Filing Party's Reply Brief. The Non-Filing Party may file a Reply Brief not later than 30 days from the date on which the Chief of Board Proceedings acknowledges receipt of the Filing Party's Opening Brief.

(3) Filing Party's Reply Brief. The Filing Party may file a Reply Brief not later than 30 days from the date on which the Chief of Board Proceedings acknowledges receipt of the Non-Filing Party's Reply Brief.

(c) Briefing Schedule; Multiple Petitions Granted. If there is more than one Filing Party and the Board grants more than one Petition for Rehearing, the following briefing schedule applies:

(1) Opening Briefs. Each party may file an Opening Brief not later than 30 days from the date on which the Board voted to grant the Petitions for Rehearing.

(2) Reply Briefs. Each party may file a Reply Brief not later than 30 days from the date on which the Chief of Board Proceedings acknowledges receipt of the last brief filed pursuant to paragraph (1).

(d) Additional Briefing. This section does not prevent a request for additional briefing under section 5435.

(e) Alternate Briefing Schedule on Rehearing. Notwithstanding subdivisions (b) and (c), the Board may order any briefing schedule that it deems appropriate.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5465. DECISION ON REHEARING.

(a) Hearing and Decision. At the conclusion of briefing under section 5464, the provisions of articles 4 and 5 of this chapter will apply, except that any reference to a "decision" or "opinion" is deemed a reference to a decision or opinion on rehearing, and any reference to the briefing schedule is deemed a reference to the briefing schedule under section 5464.

(b) Finality of Decision. The Board's decision on rehearing is the Board's decision on the appeal and becomes final 30 days from the date of the decision.

Note: Authority: Government Code section 15606. Reference: Revenue and Taxation Code sections 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

■ ■ ■

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals
Chapter 5: General Board Hearing Procedures²

ARTICLE 1: APPLICATION OF CHAPTER AND DEFINITIONS

5510. GENERAL APPLICATION OF CHAPTER 5.

(a) This chapter applies to Board hearings under any of the following laws:

- (1) Administration of Franchise and Income Tax Laws
Revenue and Taxation Code sections 18401-19802
- (2) Alcoholic Beverage Tax Law
California Constitution, article XX, section 22;
Revenue and Taxation Code sections 32001-32557
- (3) California Tire Fee
Public Resources Code sections 42860-42895;
Revenue and Taxation Code sections 55001-55381
- (4) Childhood Lead Poisoning Prevention Fee
Health and Safety Code sections 105275-105310;
Revenue and Taxation Code sections 43001-43651
- (5) Cigarette and Tobacco Products Tax Law
California Constitution, article XIII B, section 12;
Health and Safety Code sections 104555-104558;
Revenue and Taxation Code sections 30001-30482
- (6) Diesel Fuel Tax Law
Revenue and Taxation Code sections 9401-9433 and 60001-60708
- (7) Emergency Telephone Users Surcharge Law
Revenue and Taxation Code sections 41001-41176
- (8) Energy Resources Surcharge Law
Revenue and Taxation Code sections 40001-40216
- (9) Hazardous Substances Tax Law
Revenue and Taxation Code sections 43001-43651
- (10) Integrated Waste Management Fee Law
Public Resources Code sections 40000-40201, 44001-44006, and 48000-48008;
Revenue and Taxation Code sections 45001-45984
- (11) Marine Invasive Species Fee Collection Law
Public Resources Code sections 71200-71271;
Revenue and Taxation Code sections 44000-44008, 55001-55381
- (12) Motor Vehicle Fuel Tax Law
California Constitution, article XIX, sections 1-9;
Revenue and Taxation Code sections 7301-8526
- (13) Natural Gas Surcharge Law
Public Utilities Code sections 890-900;
Revenue and Taxation Code sections 55001-55381

² Editorial change renaming subchapters to subarticles (Register 2008, No. 13.).

- (14) Occupational Lead Poisoning Prevention Fee
Health and Safety Code sections 105175-105197;
Revenue and Taxation Code sections 43001-43651
- (15) Oil Spill Response, Prevention, and Administration Fees Law
Government Code sections 8670.1-8670.51.1
Revenue and Taxation Code sections 46001-46751
- (16) Private Railroad Car Tax
California Constitution, article XIII, section 19;
Revenue and Taxation Code sections 11201-11702
- (17) Publicly Owned Property
California Constitution, article XIII, section 11(g);
Revenue and Taxation Code sections 1840 and 1841
- (18) Sales and Use Tax Law, Bradley-Burns Uniform Sales and Use Tax Law, and Transactions and Use Tax Law
Revenue and Taxation Code sections 6001-7176, 7200-7226, and 7251-7279.6, respectively
- (19) Senior Citizens Homeowners and Renters Property Tax Assistance Law
Revenue and Taxation Code sections 20501-20646
- (20) State-Assessed Property
California Constitution, article XIII, section 19;
Revenue and Taxation Code sections 721-868, 4876-4880, 5011-5014
- (21) Tax on Insurers Law
California Constitution, article XIII, section 28;
Revenue and Taxation Code sections 12001-13170
- (22) Timber Yield Tax
Revenue and Taxation Code sections 423.5, 431-437, 38101-38908
- (23) Underground Storage Tank Maintenance Fee
Health and Safety Code sections 25280-25299.99.3
Revenue and Taxation Code sections 50101-50162
- (24) Use Fuel Tax
Revenue and Taxation Code sections 8601-9433
- (25) Welfare Exemption
California Constitution, article XIII, section 4(b);
Revenue and Taxation Code sections 214-214.15, 254.5-254.6, 270-272

(b) This chapter sets forth rules of general application for all Board hearings conducted under the laws listed in subdivision (a) of this section. Where the procedure for a specific law differs from the general rule, the more specific procedure will be provided or cross-referenced.

(c) The rules and procedures in chapter 4 (commencing with section 5410) apply to appeals from the actions of the Franchise Tax Board. To the extent that provisions in this chapter conflict with chapter 4, the provisions of chapter 4 control.

(d) To the extent that provisions in this chapter conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement control.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5511. DEFINITIONS.

The following definitions apply to this chapter, and also apply to chapters 2, 3, and 4 of this division as provided therein:

- (a) "Appeals Division" means the Appeals Division of the Board of Equalization's Legal Department. "Appeals Staff" means an employee or employees of the State Board of Equalization assigned to the Appeals Division of the Legal Department.
- (b) "Board" means the Board Members of the State Board of Equalization meeting or acting as a body, or the agency created by article XIII, section 9, of the California Constitution, as the context indicates.
- (c) "Board Chair" or "Chair" means the Chairperson of the State Board of Equalization, whom the Board may choose from time to time.
- (d) "Board Member" means an individual Member of the State Board of Equalization. "Board Member" includes a deputy appointed by the Controller pursuant to Government Code section 7.6 or 7.9 (as interpreted by the Attorney General), when the deputy is performing the Controller's statutory duties on the Board.
- (e) "Board Proceedings Division" means the Board Proceedings Division of the State Board of Equalization. "Board Proceedings Staff" means an employee or employees of the Board Proceedings Division.
- (f) "Board Staff" means an employee or employees of the State Board of Equalization. "Board Member's Staff" refers to Board Staff assigned to the office of a Board Member.
- (g) "Brief" means a written document that contains an argument supporting a party's position, including arguments on how laws or regulations apply to the facts presented in a party's matter. Notwithstanding this definition, affidavits and declarations submitted by parties, and documents produced by the Appeals Division, including, but not limited to, hearing summaries and final action recommendations, are not briefs.
- (h) "Chief Counsel" means the Chief Counsel of the State Board of Equalization and any person to whom the Chief Counsel may delegate his or her official duties from time to time.
- (i) "Claimant" means a taxpayer whose matter involves the denial of a claim under any of the laws listed in section 5510. The term "claimant" includes a taxpayer's authorized representative, where appropriate.
- (j) "Chief of Board Proceedings" means the Chief of the Board Proceedings Division and any person to whom the Chief of Board Proceedings may delegate his or her official duties from time to time. The Chief of Board Proceedings acts as the Clerk of the Board and establishes policy for the management of the matters to be heard by the Board, including but not limited to scheduling, issuance of notices, preparation of minutes, and the review and monitoring of documents.
- (k) "Delivery Service" means a trade or business, if such trade or business delivers documents in the ordinary course of its business, makes its delivery services available to the general public, and records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item is delivered, the date on which such item was received by the trade or business for delivery.
- (l) "Department" means the Property and Special Taxes Department of the Board of Equalization, Sales and Use Tax Department of the Board of Equalization, Energy Commission, Department of Fish and Game, Franchise Tax Board, Department of Health Services, Department of Insurance, Integrated Waste Management Board, Public Utilities Commission, Department of Toxic Substances Control and Water Resources Control Board, where appropriate.
- (m) "Deputy Director" means the Deputy Director of the State Board of Equalization's Sales and Use Tax Department or Property and Special Taxes Department and any person to whom the Deputy Director delegates his or her official duties from time to time.
- (n) "Executive Director" means the Executive Director of the State Board of Equalization and any person to whom the Executive Director may delegate his or her official duties from time to time.
- (o) "Extreme hardship" means that a person exercising ordinary care is unable to or restricted from complying with a provision of this division due to extraordinary circumstances beyond the person's control.
- (p) "Hearing" means a taxpayer's opportunity to appear before the Board during a Board meeting and present oral arguments regarding issues of fact and law relevant to the taxpayer's matter.
- (q) "Hearing Summary" is an objective, written document intended to assist the Board in its consideration of and decision on a matter for which an oral hearing has been requested.
- (r) "Matter" means:
- (1) Any petition, including, but not limited to, a petition for redetermination, petition for reassessment, petition for reconsideration of successor liability, petition for review of local tax reallocation inquiries, or petition for review of district tax redistribution inquiries;

- (2) Claim, including a claim for refund;
 - (3) Appeal from an action of the Franchise Tax Board and related proceedings provided under chapter 4;
 - (4) Application for administrative hearing;
 - (5) Petition for rehearing; and
 - (6) Any other item scheduled for a Board hearing in any program listed in section 5510, including, but not limited to, requests for relief of taxes, interest, or penalties.
- (s) "Party" means the taxpayer and the Department as defined in this section.
- (1) In any matter where an agency has requested an oral hearing in accordance with chapter 2 and the taxpayer has not requested an oral hearing, the agency requesting the oral hearing shall be the Department for purposes of this chapter, and neither the Property and Special Taxes Department nor the Appeals Division shall be the Department.
- (2) For purposes of claims or inquiries regarding the incorrect or non-distribution of local or district taxes, the term "party" means those persons defined as parties in California Code of Regulations, title 18, section 1807 or 1828.
- (t) "Person" shall have the same definition as that used in Revenue and Taxation Code section 19.
- (u) "Reasonable cause" means such circumstances as would prevent an ordinarily prudent and competent person exercising ordinary care and diligence from complying with a provision of this division.
- (v) "Tax" means any tax, fee, surcharge, assessment, appraisal review, or exemption program administered by the Board or another agency and which is the subject of a matter before the Board.
- (w) "Taxpayer" means an individual or business entity that is a taxpayer, feepayer, surcharge payer, appellant, petitioner, claimant, or any other person who has a liability, assessment, or other matter for Board hearing such as an appeal from the actions of the Franchise Tax Board, or who is a person directly interested in any matter before the Board under any of the programs listed in section 5510. A taxpayer is not a party to a claim or inquiry regarding the incorrect or non-distribution of local or district taxes except as provided in California Code of Regulations, title 18, section 1807 or 1828. The term "taxpayer" also includes, where appropriate, the taxpayer's authorized representative.
- (x) "Section" means a section of title 18 of the California Code of Regulations, unless otherwise specified.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. References: California Constitution, article XIII, section 17; Government Code sections 15606, 15640; Revenue and Taxation Code sections 20, 254.5, 254.6, 742, 748, 1840, 5107, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5512. CONSTRUCTION.

The following provisions of this division must be construed and applied in accordance with the following terminology:

- (a) "Must" is mandatory.
- (b) "May" is permissive.
- (c) "May not" means not permitted to.
- (d) "Will" expresses a future contingency or predicts an action in the ordinary course of events, but does not signify a mandatory duty.
- (e) "Should" expresses a preference or a nonbinding recommendation.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 2: REQUIREMENTS FOR SCHEDULING BOARD MEETINGS AND HEARINGS

Subarticle 1. Meeting Calendars

5521. MONTHLY BOARD MEETINGS.

(a) **Monthly Meetings.** The Board holds monthly Board meetings. Board meetings are conducted in Sacramento and at other locations within the state for the convenience of taxpayers and their representatives residing outside the Sacramento area.

(b) **Additional Meetings.** At the discretion of the Board Chair, additional meetings may be conducted at such times and places as needed within the state.

(c) **Teleconference Board Meetings.** When circumstances require, the Board may hold meetings via teleconference as provided in Government Code section 11123.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code section 15609, 15610.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5521.5. ADOPTION OF BOARD MEETING CALENDAR.

(a) The Board generally adopts a meeting calendar for the following calendar year, but may adopt a meeting calendar for any appropriate period.

(b) Within 15 days of adoption, the meeting calendar will be available for viewing by the public on the Board's website at www.boe.ca.gov.

(c) The Chief of Board Proceedings may cancel a portion of a Board meeting listed on a previously adopted meeting calendar after giving notice to the Board Chair. A majority vote of the Board may cancel or change a meeting date or location identified on a previously adopted meeting calendar. Board Proceedings Staff must promptly amend the publicly available meeting calendar to reflect any changes made pursuant to this subdivision.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code section 15609, 15610.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

Subarticle 2. Requesting and Scheduling an Oral Hearing

5522. RIGHT TO REQUEST AN ORAL HEARING.

(a) Every taxpayer may file a written request for an oral hearing before the Board regarding any matter subject to the provisions of this chapter.

(b) Written requests for an oral hearing must be granted where the Board is required to grant an oral hearing on the taxpayer's matter by a statute or regulation, and will be liberally granted with regard to discretionary matters, unless an oral hearing is being requested for the primary purpose of delay or the taxpayer's position is frivolous or groundless.

(c) Business and Special Taxes: A written request for an oral hearing must be filed no later than 30 days after the date the Appeals Division issues its Decision and Recommendation pursuant to chapter 2 of this division.

(d) Property Taxes: A written request for an oral hearing must be included in the taxpayer's petition or application pursuant to chapter 3 of this division.

(e) Appeals from Actions of the Franchise Tax Board: A written request for an oral hearing before the Board must be filed in accordance with section 5440 of chapter 4 of this division.

(f) The Board may hold an oral hearing to discuss any matter whether or not an oral hearing has been timely requested in accordance with subdivisions (c), (d), and (e).

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, Revenue and Taxation Code. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5522.2. ACKNOWLEDGEMENT OF REQUEST FOR ORAL HEARING.

(a) If Board Staff receives a written request for an oral hearing or confirmation that a previously requested hearing is still desired, the Board Proceedings Division must issue a letter acknowledging the request. The acknowledgment letter will indicate whether an oral hearing before the Board has been granted, and, if granted, will also provide the location where the oral hearing will be scheduled.

(b) Taxpayers must submit requests to change the location where an oral hearing is scheduled to the Board Proceedings Division upon receipt of the acknowledgement letter. Upon receipt of a request to change location, the Chief of Board Proceedings will review the request, prepare a recommendation, and submit the request and recommendation to the Board Chair for decision.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828,

8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5522.4. CONSOLIDATION FOR HEARING OR DECISION.

(a) Multiple matters may be consolidated for hearing or decision if the facts and issues are similar and no substantial right of any party will be prejudiced.

(b) The Board Members, Appeals Staff, or any party may request a consolidation, or object to a consolidation of, matters for hearing or decision.

(c) Requests for and objections to the consolidation of matters for hearing or decision must be submitted in writing to the Board Proceedings Division and to all parties to the matters at issue.

(1) A request for consolidation should establish that the relevant facts and issues in each matter to be heard or decided are similar, and that no substantial right of any party would be prejudiced by consolidation.

(2) An objection to the consolidation of matters to be heard or decided should establish that consolidation would have an adverse affect on a substantial right of the objecting party.

(d) If the Chief Counsel determines that consolidation would not prejudice a substantial right of any party, or all of the parties to such matters agree to consolidation, the Chief of Board Proceedings will consolidate such matters and notify all of the parties. If the Chief Counsel determines that consolidation would have an adverse effect on a substantial right of any party, the matters may not be consolidated regardless of the parties' consent.

(e) Any party may file an objection to consolidation not later than 15 days from the date the Chief of Board Proceedings issues the notice described in subdivision (d). Upon receipt of an objection, the matters must be deconsolidated unless the Chief Counsel determines that the objection is frivolous or deconsolidation would result in the misuse of administrative resources.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5522.6. NOTICE OF BOARD HEARING AND RESPONSE.

(a) General Procedure.

(1) Except as provided in paragraph (2) of this subdivision, Board Proceedings Staff must mail a Notice of Board Hearing along with a Response to Notice of Board Hearing to each party and each party's authorized representative at least 75 days in advance of the parties' scheduled hearing date.

(2) With regard to State Assessee and Private Railroad Car Matters, Board Proceedings Staff must mail a Notice of Board Hearing along with a Response to Notice of Board Hearing to each party and each party's authorized representative at least 45 days in advance of the parties' scheduled hearing date.

(b) Notice of Board Hearing. The notice must contain the following information:

(1) The name, address, and case identification number of the taxpayer;

(2) The session, date, and location of the hearing;

(3) The due date of the Response to Notice of Board Hearing;

(4) The Board Proceedings Division's contact name, email address, mailing address, telephone number, and fax number; and

(5) The date the Notice of Board Hearing was mailed.

(c) Response to Notice of Board Hearing. Each party or each party's authorized representative must return the Response to Notice of Board Hearing no later than 15 days from the date the Notice of Board Hearing was mailed. Each party or party's authorized representative must respond to the Notice of Board Hearing by indicating that:

(1) The party or party's authorized representatives will appear at the hearing at the time and place noted;

(2) The party waives the opportunity to appear and be represented at the hearing and requests the Board to decide the matter on the basis of the written record on file and without an oral hearing; or

(3) The party withdraws the party's request for a hearing.

A party or party's representative may also include a request for an interpreter in the Response to Notice of Board Hearing. Persons participating in Board meetings who speak a language other than English and require an interpreter are entitled to an interpreter at no charge.

(d) Waiver of Notice. The 75-day and 45-day notice periods may be waived upon agreement among all parties and the Chief Counsel. If the 75-day or 45-day notice period is waived, the Chief of Board Proceedings will modify any briefing schedule as appropriate.

(e) Failure to Respond to Notice of Board Hearing.

(1) If the party or parties who requested an oral hearing all fail to return the Response to Notice of Board Hearing by the deadline stated in the Notice of Board Hearing, the matter will be submitted to the Board for decision on the basis of the written record on file without an oral hearing.

(2) Board Proceedings Staff will notify the taxpayer, and any state agency that is a party to a matter in writing that the matter has been removed from the oral hearing calendar and placed on a consent calendar for Board decision.

(3) Prior to a Board decision, the Chief Counsel, in his or her discretion, may make exceptions to return the matter to the oral hearing calendar upon a showing of reasonable cause.

(4) If the Chief Counsel makes an exception, the Board Proceedings Division must promptly provide notice to all the parties to such matter.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361,

30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5522.8. DISMISSAL, DEFERRAL, AND POSTPONEMENT.

(a) Dismissal. The Chief of Board Proceedings will dismiss a matter under any of the following circumstances:

(1) The taxpayer or the taxpayer's authorized representative submits a written, signed request for dismissal;

(2) The Department submits a written concession of the entire amount of the deficiency, refund, or claim at issue; or

(3) The parties submit a written stipulation, signed by all the parties, in which all parties agree to dismissal.

(b) Deferral or Postponement of Hearing or Briefing. A Board Member, Appeals Staff, or any party to a matter may request that a hearing or the due date of any brief be deferred or postponed for reasonable cause. Requests for deferral or postponement must be submitted to the Chief of Board Proceedings.

(1) Deferral or Postponement for Short Periods of Time. The Chief of Board Proceedings may grant a deferral or postponement for a period of 90 days or less in his or her sole discretion, or for a period of more than 90 days with the consent of the Chief Counsel in any of the following circumstances:

(A) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to the illness of that person or a member of that person's immediate family;

(B) A party or a representative of a party cannot appear at a hearing or meet a briefing deadline due to an unavoidable scheduling conflict;

(C) A party has obtained a new representative who requires additional time to become familiar with the case;

(D) The Chief of Board Proceedings has been informed that all parties desire a deferral or postponement;

(E) The Chief of Board Proceedings has been informed by the Franchise Tax Board that the matter is being reviewed for possible settlement consideration; or

(F) Any other facts or circumstances determined by the Chief of Board Proceedings and the Chief Counsel to constitute reasonable cause.

(2) Deferral or Postponement for Formal Settlement Negotiations. The Chief of Board Proceedings may, in his or her discretion, grant a deferral or postponement for an initial period of up to nine months, and thereafter, for additional periods of time in 160 day increments, if the parties to the matter have entered into formal settlement negotiations.

(3) Deferral or Postponement for Other Actions. The Chief Counsel may, in his or her discretion, grant a deferral or postponement for a determined period of time due to the following circumstances:

(A) The Chief Counsel determines that related civil or criminal litigation is pending in state or federal court, the outcome of which is likely to have a bearing on the matter being deferred or postponed.

(B) The Chief Counsel determines that unrelated civil or criminal litigation pending in federal or state court contains similar issues to those claimed by parties to a matter and that the outcome of the unrelated litigation is likely to have a bearing on the matter being deferred or postponed.

(4) Deferral or Postponement for Bankruptcy Action. The Chief of Board Proceedings shall postpone a matter that is subject to chapter 4 of this division upon receiving notice that the taxpayer is a debtor in a bankruptcy proceeding. The Chief of Board Proceedings shall notify the Board and the parties that the matter is postponed until the taxpayer's bankruptcy is concluded.

(5) The Chief Counsel may, with the consent of the Board Chair, grant a deferral or postponement for any reason.

(c) Additional Deferrals or Postponements. After the initial deferral or postponement period, the Chief Counsel may grant additional deferrals and postponements that are not described in subdivisions (a) and (b) of this section upon a showing of extreme hardship and only with the consent of the Board Chair.

(d) The Chief of Board Proceedings must provide written notification to the parties if a deferral or postponement has been granted.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

Subarticle 3. Representation, Prehearing Documents, and Preparation for Hearing

5523. REPRESENTATION AT HEARINGS.

(a) Representation. During the hearing, taxpayers may be represented by any authorized person or persons, at least eighteen years of age, of the taxpayer's choosing, including, but not limited to, an attorney, appraiser, accountant, bookkeeper, employee or business associate. For purposes of this section, a person whose only function is to interpret for the taxpayer is not a representative.

(b) Recognition. The Board will recognize all authorized representatives who are identified in writing or orally by the taxpayer. Authorized representatives shall be permitted to receive confidential information relating to the taxpayer they represent, and to perform on behalf of the taxpayer all acts that the taxpayer may perform in preparation for and during the hearing.

(c) Substitution or Withdrawal. Taxpayers must promptly notify the Chief of Board Proceedings in writing of any substitutions or withdrawals of representation and must also notify the Franchise Tax Board in all matters that are subject to chapter 4 of this division.

(d) Suspended or Disbarred Representatives. A person suspended or disbarred from practice before the Franchise Tax Board pursuant to Revenue and Taxation Code section 19523.5 may not represent any taxpayer in a matter that is subject to chapter 4 of this division after the Franchise Tax Board gives the Chief of Board Proceedings notice of the suspension or disbarment.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6,

742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5523.1. POWER OF ATTORNEY.

(a) Requirement. The Board or Board Staff may require a taxpayer to complete a Board approved Power of Attorney in order to authorize another person or persons to act on the taxpayer's behalf. The Power of Attorney must be a standard form adopted in conjunction with the Franchise Tax Board to be used in either State Board of Equalization or Franchise Tax Board matters.

(b) Form. The Power of Attorney must shall include the following information:

(1) Taxpayer's name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address;

(2) The name, address (including e-mail, if any), and telephone and FAX number of the appointed representative(s);

(3) The tax matters in which the representative is authorized to represent the taxpayer; the scope of the representative's authority; and the tax period(s) for which the authorization is granted;

(4) A statement that the Power of Attorney revokes all prior Powers of Attorney, with any exceptions to the revocation;

(5) The time period during which the Power of Attorney shall be in effect; and

(6) The signature(s) and title of all affected taxpayers and the date of signature.

(c) In lieu of the standard form described in subdivision (a), Board Staff will accept any written document containing substantially all of the provisions required by subdivision (b), including but not limited to a statutory form power of attorney complying with the provisions of Probate Code section 4401.

(d) If an issue arises as to a representative's authorization under any power of attorney, Board Staff will forward the document to the Chief Counsel, who will determine its legal effect.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140,

50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5523.2. CONTRIBUTION DISCLOSURE FORMS.

(a) The Board is subject to the Quentin L. Kopp Conflict of Interest Act of 1990 (Gov. Code, § 15626) as interpreted by California Code of Regulations, title 18, sections 7001 through 7011, which requires Board Members to disclose certain political contributions and disqualifies Board Members from participating in certain adjudicatory proceedings (as defined in Gov. Code, § 15626, subd. (h)(5)). In order to comply with the provisions of the Quentin L. Kopp Conflict of Interest Act of 1990:

(1) Every Board Member must make the disclosures required by California Code of Regulations, title 18, section 7009; and

(2) Every party, participant and agent as defined in California Code of Regulations, title 18, sections 7004 through 7006 must complete a contribution disclosure form as required by California Code of Regulations, title 18, section 7011.

(b) Approximately 45 days prior to a hearing, Board Proceedings Staff will mail contribution disclosure forms to all parties, participants, and agents as defined in California Code of Regulations, title 18, sections 7004 through 7006, inquiring as to whether contributions have been made to one or more Board Members.

(c) Contribution disclosure forms should be returned to the Board Proceedings Division prior to the recipient's scheduled hearing.

(d) The rules and definitions contained in Government Code section 15626 and California Code of Regulations, title 18, sections 7001 through 7011 apply to this section.

Note: Authority: Government Code section 15606. Reference: Government Code section 15606, 15626.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5523.3. HEARING SUMMARY.

(a) Preparation. The Appeals Division should prepare and submit an objective Hearing Summary to the Chief of Board Proceedings:

(1) Generally within 40 days of the oral hearing date, with respect to matters arising under chapter 2 of this division;

(2) As provided in chapter 3 of this division, with respect to matters arising under chapter 3; or

(3) As provided in section 5444, with respect to matters arising under chapter 4 of this division.

If the Appeals Division determines that a Hearing Summary requires modification after initial distribution, the Appeals Division will promptly provide the modifications to the Chief of Board Proceedings.

(b) Date of Mailing. The Board Proceedings Division must mail, transmit via electronic means (e.g., facsimile, e-mail, etc.), or otherwise provide the taxpayer and the Department with a copy of the Hearing Summary, generally within 30 days of the oral hearing date. Modifications to a Hearing Summary after initial distribution must be mailed, transmitted via electronic means (e.g., facsimile, e-mail, etc.), or otherwise provided to the taxpayer and the Department promptly after the modified Hearing Summary is provided to the Chief of Board Proceedings in a manner intended to provide prompt notice.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361,

30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5523.4. ADDITIONAL BRIEFING.

(a) Additional Briefing. If the Board, a Board Member, or the Assistant Chief Counsel for the Appeals Division or his or her designee determines that insufficient briefing has been provided under chapter 2 of this division after issuance of the Hearing Summary, but prior to an oral hearing before the Board, a Board Member or the Assistant Chief Counsel for the Appeals Division or his or her designee may request additional briefing from either party in a writing addressed to the Chief of Board Proceedings.

(b) Briefing Schedule. Upon receipt of a request for additional briefing described in subdivision (a), the Chief of Board Proceedings will set a briefing schedule and notify the parties that additional briefing is required.

(c) General Requirements. All briefs permitted to be filed pursuant to this section must follow the requirements listed below:

(1) Be addressed and mailed to the Chief of Board Proceedings;

(2) Be mailed or personally delivered to the other parties;

(3) Length.

(A) Not exceed 30 typed or handwritten, double-spaced 8 ½" by 11" pages, printed on one side only; or

(B) Not exceed 15 typed or handwritten, single-spaced 8 ½" by 11" pages, printed on one side only;

(C) Type-font size of at least 10 points or 12 characters per inch;

(D) The Table of Contents, Table of Authorities, and exhibits are not included in the page count;

(4) Exception. An exception to the requirements of paragraph (3) may be granted prior to the deadline for filing a brief. Exceptions may be requested by submitting a written request establishing reasonable circumstances that justify the necessity for additional pages to the Chief of Board Proceedings. It is at the discretion of the Chief Counsel or his or her designee to approve a request.

(d) Appeals from the Actions of the Franchise Tax Board: This section does not apply to additional briefing in matters that are subject to the provisions of chapter 4 of this division. Section 5435 of chapter 4 of this division applies to such additional briefing.

(e) Property Tax Matters. This section applies to additional briefing in matters that are subject to chapter 3, article 3 of this division, and does not apply to matters subject to chapter 3, article 2 of this division.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096,

41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581

History: 1. New section adopted 9-12-2007; effective 2-6-2008.
2. Renamed (e) to (d) and (f) to (e). Adopted 5-28-08; Effective 7-16-08.

5523.5. PREPARATION FOR BOARD HEARING AND SUBPOENAS.

(a) Scope of Hearing. An oral hearing will be limited to consideration of the facts, issues, values, or precise elements in dispute in a taxpayer's matter. The Board may ask the parties questions during an oral hearing, and will afford the parties an opportunity to respond.

(b) Subpoenas. The Board may issue subpoenas for the attendance of witnesses or the production of books, records, accounts and papers before the Board, the Board's Executive Director, individual Board Members, or any other representative of the Board in accordance with Government Code section 15613. An application for a subpoena for the production of books, records, accounts and papers must be supported by an affidavit showing good cause and containing the information prescribed by Code of Civil Procedure section 1985. Any affidavit filed in support of an application for a subpoena must be served with the subpoena. A subpoena must be signed by a Board Member, the Board's Executive Director, or other person designated by the Executive Director. Taxpayers are required to serve subpoenas issued pursuant to their request upon the witnesses identified in the subpoenas and will bear any expenses incurred.

(c) Time Allocation. The Chief of Board Proceedings will generally allocate a total of 35 minutes per hearing. The Chief of Board Proceedings will inform the parties and the Board of the time allocations prior to the hearing.

(d) Additional Time. A party may request additional time to present a complex matter. A request for additional time must be submitted to the Board Proceedings Division in writing no less than 15 days prior to the hearing, and state the reason(s) why additional time is needed. The Chief of Board Proceedings must submit requests for additional time to the Board Chair for approval. The Board Chair may grant a party whatever additional time the Board Chair determines the party needs to present a complex matter. Board Proceedings Staff will inform all the parties and the Board in writing as to whether a request for additional time has been granted or denied.

(e) Modification. At the oral hearing, the Board Chair may limit the time for a party's presentation if, in his or her discretion, the Board Chair determines that the party's presentation has no purpose other than to delay the proceedings. The Board Chair may, in his or her discretion, grant a party additional time to complete its presentation during the hearing.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15613, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5523.6. PRESENTATION OF EVIDENCE OR EXHIBITS.

(a) Admissible Evidence. Any relevant evidence, including affidavits, declarations under penalty of perjury, and hearsay evidence, may be presented to the Board at a hearing. Each party will be permitted to comment on or respond to any affidavits, declarations, or any other evidence submitted.

(b) Submission of Evidence. Parties should submit documentary evidence to the Board Proceedings Division and to the opposing party at least 14 days prior to the hearing in order to facilitate the orderly consideration of the issues at the hearing. Although the Board may permit a party to submit documentary evidence at the hearing, the Board is not required to delay or postpone the hearing in order to consider evidence submitted at the hearing. The Board will consider any objections to, and comments on, the evidence presented at the oral hearing in assigning weight to such evidence. The Board may refuse to allow the presentation of evidence that it considers irrelevant, untrustworthy, or unduly repetitious.

(c) Stipulation of Facts. The taxpayer and the Department may file, at any time prior to submission of the matter for decision, a stipulation of the facts upon which they agree, the facts which are in dispute, and the reasons for the dispute. The Board or the Chief Counsel may require the parties to file such a stipulation where appropriate.

(d) Official Notice. The Board may on its own or at the request of a party take official notice of any fact that may be judicially noticed by the courts of this State. Any party may, at the hearing or in its petition for rehearing, refute any matter thus noticed.

(e) Distribution. Board Proceedings Staff must provide copies of any documentary evidence that has been submitted or officially noticed, any written arguments concerning the relevance of the evidence, and any stipulations to the Board Members, each party, and the Appeals Division.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5523.7. WITNESSES.

(a) Witnesses. The taxpayer and the Department may offer the testimony of any person who can provide relevant information concerning the matter, including representatives of the taxpayer and the Department who have knowledge concerning the facts at issue in the matter.

(b) If a witness refuses to testify or produce books, records, accounts, or papers pursuant to a Board issued subpoena, the Board may initiate contempt proceedings as provided in Government Code section 15614 to compel compliance. A person found guilty of contempt may be punished by a fine and imprisonment in the county jail.

(c) As part of the Response to Notice of Board Hearing, the parties should provide the Board Proceedings Division and the opposing party with the name and address of any witness who will testify, and a brief description of the purpose of their testimony, in advance of the hearing.

(d) The Board Chair may, at the Board Chair's discretion, direct any witness to testify under oath or affirmation, and any Board Member or party to a matter may request that any witness testify under oath or affirmation.

(e) Each party may cross-examine opposing witnesses. However, the Board will not compel witnesses to answer questions in any particular manner.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7081, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 15640, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5523.8. COMMUNICATIONS WITH BOARD MEMBERS.

The Board Members shall remain accessible to their constituents, their subordinates, other governmental agencies, and taxpayers at all times in order to execute their constitutional and statutory duties. Therefore, such persons and their authorized representatives, including members of the State Bar, may contact Board Members and a Board Member's Staff at any time, including while a matter involving such persons is awaiting an oral hearing before the Board.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15609.5, 15610, 15623; Revenue and Taxation Code section 7081.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 3: PUBLIC NOTIFICATION OF BOARD MEETING

5530. PUBLIC AGENDA NOTICE.

(a) Board Proceedings Staff must mail a Public Agenda Notice showing the matters and other items of business scheduled to be conducted at an upcoming Board meeting to those interested parties who have requested such notice in writing. The Public Agenda Notice may be mailed via electronic mail or the U.S. Postal Service, and must be mailed at least 10 days prior to the scheduled Board meeting to which it relates. The Public Agenda Notice must also be available for public viewing on the Internet at www.boe.ca.gov.

(b) The Public Agenda Notice must include:

(1) The name, address, and telephone number of Board Proceedings Staff who can provide further information prior to the meeting;

(2) The address of the Internet site where notices are made available; and

(3) A specific agenda for the meeting, containing a brief description of the matters and other items of business to be conducted or discussed in either open or closed session. A description of a matter or other item of business to be conducted or discussed in closed session shall include a citation to the specific statutory authority under which a closed session is being held.

(c) A Public Agenda Notice may contain additional information that is not described in subdivision (b).

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451,

38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code section 11125.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 4: CONDUCT OF THE BOARD MEETING AND BURDEN OF PROOF

5540. CONDUCT OF THE BOARD MEETING.

(a) Board meetings are conducted in accordance with the following laws:

(1) Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132), which requires the Board to hold public meetings;

(2) Government Code section 15625, which prohibits Board Members and Board employees from engaging in certain economic activities that are incompatible with their duties to the Board and create a conflict of interest;

(3) The Quentin L. Kopp Conflict of Interest Act of 1990 (Gov., Code § 15626), as interpreted by California Code of Regulations, title 18, sections 7001 through 7011, which requires Board Members to disclose certain political contributions and disqualifies Board Members from participating in certain adjudicatory proceedings; and

(4) The Political Reform Act (Gov. Code, § 81000, et seq.), which requires Board Members and Board employees to disclose certain financial interests that may create a conflict of interest, and prohibits Board Members and Board employees from making, participating in making, or in any way using their official position to influence a decision in which they know or should know that they have a financial interest.

(b) The public may attend those portions of Board meetings that are conducted during open session. If a person or persons, including a party or parties to a matter, willfully interrupt any portion of a Board meeting, the Board Chair may order the removal of such person or persons from the meeting.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 11120-11132, 15609, 15625, 15626, 81000-91014.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5541. BURDEN OF PROOF.

(a) Except as otherwise specifically provided by law, the burden of proof is upon the taxpayer as to all issues of fact.

(b) In any proceeding involving the issue of fraud with intent to evade tax, the burden of proof as to that issue is upon the Department.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 270, 742, 1840, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 5: VOTING AND DECISIONS

5550. QUORUM.

A quorum must be present for the Board to take any action.

(a) Any three Board Members present at a meeting constitutes a quorum. For purposes of this chapter, a Board Member is present at a meeting, if the Board Member is participating in the meeting via teleconference pursuant to section 5521.

(b) When a Board Member is disqualified from participating in a decision under the contribution disclosure statute (Gov. Code, § 15626), or the Political Reform Act (Gov. Code, § 81000, et seq.), that Board Member is not counted for purposes of a quorum.

(c) If a deputy designated by the Controller pursuant to Government Code section 7.6 or 7.9 (as interpreted by the Attorney General) is not authorized to participate in a decision because the matter before the Board is a constitutional matter, the deputy is not counted for purposes of a quorum.

Note: Authority: California Constitution, article XIII, section 11; Government Code section 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: California Constitution, article XIII, section 17; Government Code sections 7.6, 7.9, 11122.5, 15606, 15626, 81000-91014.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5551. VOTING AND DECISIONS.

(a) At the conclusion of an oral hearing, the Board may vote to decide the matter, take it under submission and decide it later at the same meeting or at a subsequent meeting, or continue the hearing to a later date. The Board may also adopt a Memorandum Opinion in a matter subject to chapter 2 or 3 of this division, or a Summary Decision or Formal Opinion in a matter subject to chapter 4 of this division, or direct Appeals Staff to draft a Memorandum Opinion, Formal Opinion, or Summary Decision and submit the opinion or decision to the Board for consideration as a non-appearance matter at a subsequent meeting. A Formal Opinion or Memorandum Opinion adopted by the Board may be cited as precedent in any matter or other proceeding before the Board, unless the opinion has been depublished, overruled, or superseded. Summary Decisions may not be cited as precedent in any matter or other proceeding before the Board.

(b) Dissenting and Concurring Opinions.

(1) If a Memorandum Opinion or Formal Opinion is presented to the Board for adoption, any Board Member may:

(A) Submit a Dissenting Opinion setting forth the Board Member's rationale for disagreeing with the Memorandum Opinion or Formal Opinion; or

(B) Submit a Concurring Opinion setting forth the Board Member's rationale for agreeing with the result reached in the decision, if different than the rationale set forth in the Memorandum Opinion or Formal Opinion.

(2) A Dissenting Opinion or Concurring Opinion submitted under paragraph (1) of this subdivision is deemed to be adopted on the same date as the Memorandum Opinion or Formal Opinion to which it relates is adopted, and is publishable as a supplement to the Memorandum Opinion or Formal Opinion. A Dissenting Opinion or Concurring Opinion may be cited and relied upon in the same manner as a dissent or concurrence published in an opinion of the California Supreme Court or California Courts of Appeal.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: California Constitution, article XIII, section 17; Government Code sections 7.9, 11122.5, 11125, 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 742, 748, 1840, 5148, 6074, 6456, 6538, 6538.5, 6562, 6592, 6593, 6593.5, 6596, 6901, 6902, 6906, 6981, 7209, 7223, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8128, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9152, 9196, 12429, 12636, 12637, 12951, 12977, 12978, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30178, 30178.1, 30243, 30243.5, 30262, 30282, 30283, 30283.5, 30284, 30361, 30362, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32312, 32313, 32401, 32402, 32402.1, 32404, 32407, 32440, 38433, 38435, 38443, 38452, 38453, 38454, 38455, 38601, 38602, 38605, 38631, 40093, 40102, 40103, 40103.5, 40104, 40111, 40112, 40115, 40121, 41087, 41096, 41097, 41097.5, 41098, 41100, 41101, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43351, 43352, 43451, 43452, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45352, 45353, 45651, 45652, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46501, 46502, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50120.2, 50120.3, 50139, 50140, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55102, 55103, 55221, 55222, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60501, 60502, 60506, 60507, 60521, 60522, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 6: POST HEARING NOTICES AND PETITIONS FOR REHEARING

5560. NOTICE OF BOARD DECISION.

(a) Generally. All parties to a proceeding will be notified in writing of the Board's decision. The notice will contain the determined value, tax, fee, penalty or interest owed.

(1) Business Taxes: In general, notice of the Board's decision will be mailed to all parties within 45 days from the date of the Board's decision. Notice of a decision denying a claim for refund will be mailed to all parties within 30 days from the date of the Board decision.

(2) Appeals from actions of the Franchise Tax Board: In general, a copy of the decision or opinion prepared pursuant to article 5 of chapter 4 will be mailed to all parties within 3 business days from the date of the Board's decision.

(3) Property Tax: In general, a Notice of Decision will be mailed within 30 days from the date of the Board's decision.

(b) Finality of Business Taxes Decisions. The Board's decision on a matter subject to chapter 2 of this division shall become final 30 days after the date notice of the Board's decision is mailed to the taxpayer unless, within that 30-day period, one of the following occurs:

(1) A party to the petition or appeal files a Petition for Rehearing.

(2) The Board Chair orders the Chief of Board Proceedings to hold the decision in abeyance and notify all parties of the order.

(c) Finality of Property Tax Decisions. Chapter 3 of this division applies to the finality of decisions on property tax petitions.

(d) Appeals from the Franchise Tax Board. Chapter 4 of this division applies to the finality of decisions and requests for rehearings on appeals from actions of the Franchise Tax Board.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code sections 254.5, 254.6, 744, 749, 1842, 5148, 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6906, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12981, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5561. PETITION FOR REHEARING.

(a) Generally. A taxpayer with a matter subject to chapter 2 of this division may file a Petition for Rehearing within 30 days of the date on which notice of the Board's decision is mailed to the taxpayer. The petition must:

(1) Identify an irregularity in the Board's proceedings that prevented the fair consideration of the matter;

(2) Identify an accident or surprise that occurred, which ordinary caution could not have prevented;

(3) Identify newly discovered, relevant evidence, which the party requesting the rehearing could not have reasonably discovered and provided prior to the Board's decision; or

(4) Demonstrate that there is insufficient evidence to justify the decision or the decision is contrary to law.

(b) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of Petitions for Rehearing and related documents. A Petition for Rehearing or related document may be filed electronically pursuant to this section if an electronic copy of such document is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov.

A Petition for Rehearing or related document may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the address provided below:

Board Proceedings Division, MIC: 80
State Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA 94279-0081

(c) Acceptance or Rejection of the Petition for Rehearing.

(1) Upon receipt of a Petition for Rehearing, the Chief of Board Proceedings must determine whether the Petition for Rehearing is timely. The Chief of Board Proceedings may consult with Appeals Staff in making this determination.

(2) If the Petition for Rehearing is found to be timely, the Chief of Board Proceedings must accept the Petition for Rehearing and mail a letter to all parties acknowledging the acceptance.

(3) If the Chief of Board Proceedings determines that the Petition for Rehearing is not timely, the Chief of Board Proceedings must reject the Petition for Rehearing and will advise the taxpayer regarding alternative rights or remedies.

(d) Chapter 4 of this division applies to Petitions for Rehearing filed with regard to appeals from actions of the Franchise Tax Board.

Note: Authority: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5562. RECOMMENDATION ON PETITION FOR REHEARING.

(a) The Appeals Division should prepare and submit a recommendation to grant or deny a Petition for Rehearing to the Chief of Board Proceedings and parties to the matter at issue generally within 90 days from the date of the letter accepting the Petition for Rehearing.

(b) The recommendation on Petition for Rehearing will be submitted to the Board for consideration as a non-appearance matter.

(c) The Chief of Board Proceedings must notify all the parties to the matter at issue of the Board's decision.

(1) If the Board grants a rehearing based on the recommendation of the Appeals Division, or another rationale, then the Board's prior decision will be held in abeyance pending the resolution of the rehearing.

(2) If the Board denies a rehearing based on the recommendation of the Appeals Division, or another rationale, then the Board's prior decision becomes final 30 days from the date the Chief of Board Proceedings mails the notice of the denial of the Petition for Rehearing.

(d) Chapter 4 of this division applies to Decisions on Petitions for Rehearing with regard to appeals from the actions of the Franchise Tax Board.

Note: Authority: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5563. REHEARINGS.

(a) If the Board grants a rehearing in a matter subject to chapter 2 of this division, the Chief of Board Proceedings will:

- (1) Consult with the Appeals Staff to determine a briefing schedule appropriate for the rehearing; and
- (2) Inform all parties regarding such briefing schedule in writing.

(b) Chapter 4 of this division applies to rehearings granted in appeals from actions of the Franchise Tax Board.

Note: Authority: Government Code section 15606; Revenue and Taxation Code sections 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Revenue and Taxation Code sections 6074, 6456, 6538, 6562, 6592, 6593, 6593.5, 6596, 6814, 6981, 7657, 7657.1, 7658, 7658.1, 7700, 7700.5, 7711, 8126, 8191, 8828, 8828.5, 8852, 8877, 8878, 8878.1, 8879, 9151, 9196, 12429, 12431, 12636, 12637, 12951, 12977, 19048, 19104, 19334, 19346, 20645, 30175, 30176, 30176.1, 30176.2, 30177, 30243, 30243.5, 30262, 30263, 30282, 30283, 30283.5, 30284, 30361, 30365, 30421, 32255, 32256, 32256.5, 32257, 32302, 32304, 32312, 32313, 32401, 32404, 32407, 32440, 38433, 38435, 38443, 38445, 38452, 38453, 38454, 38455, 38601, 38605, 38631, 40093, 40095, 40102, 40103, 40103.5, 40104, 40111, 40115, 40121, 41087, 41089, 41096, 41097, 41097.5, 41098, 41100, 41104, 41107, 43157, 43158, 43158.5, 43159, 43303, 43305, 43351, 43352, 43451, 43454, 43491, 45155, 45156, 45156.5, 45157, 45303, 45305, 45352, 45353, 45651, 45654, 45801, 46156, 46157, 46157.5, 46158, 46302, 46303, 46353, 46355, 46501, 46505, 46551, 50112.2, 50112.3, 50112.4, 50112.5, 50116, 50118, 50120.2, 50120.3, 50139, 50142, 50151, 55044, 55045, 55046, 55046.5, 55083, 55085, 55102, 55103, 55221, 55224, 55281, 60209, 60210, 60211, 60212, 60332, 60333, 60352, 60354, 60501, 60502, 60521, 60581.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

ARTICLE 7: CORRESPONDENCE, PUBLIC HEARING RECORDS, AND COPIES

5570. MAILING ADDRESS.

The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of all correspondence during the hearing process. Correspondence may be filed electronically pursuant to this

section if an electronic copy of such correspondence is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov.

Correspondence during the hearing process may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the following address:

Board Proceedings Division, MIC: 80
State Board of Equalization
450 N Street
P. O. Box 942879
Sacramento, CA 94279-0081

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5571. TIMELINESS OF DOCUMENTS.

(a) A document or other correspondence is timely if it is mailed to or received at the headquarters office of the State Board of Equalization within the time specified by the particular statute or regulation under which the document is filed.

(b) In the absence of other evidence, the post-mark date or the date of delivery to a delivery service, as defined in section 5511 of this chapter, is considered the mailing date. If the last day for mailing or delivering a document falls on a Saturday, Sunday or holiday, the time for mailing or delivering such document is extended to the next business day.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code sections 15606, 15640; Revenue and Taxation Code section 254.5, 270, 724, 742, 1840, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, 60352.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5572. HEARING RECORD.

(a) Meetings of the Board are held in accordance with the Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132). Public Agenda Notices issued for, minutes and transcripts of, and documents incorporated into the record of oral hearings conducted during open session at public meetings are public records and open to public inspection. Documents to which a waiver described in section 5573 applies are also disclosable public records.

(b) Minutes of public meetings are the official record of each meeting. Minutes are presented to the Board for approval. The approved minutes are posted on the Internet at www.boe.ca.gov and a complete set of approved minutes are bound into one or more volumes. The bound volumes of Board minutes are the permanent record of Board actions. They are available for review in the Board Proceedings Division and the State Archives.

(c) Transcripts.

(1) In general, the Board records its oral hearings. However, the recordings are not generally transcribed. Transcripts of hearings, administrative sessions, and Chief Counsel Matters are prepared only upon written request.

(2) Interested persons may submit a written request for Board Staff to prepare transcripts described in paragraph (1) of this subdivision. Such requests must specifically identify the matters to be transcribed.

(3) If Board Staff is able to prepare a transcript of a recorded hearing, the Board will charge a fee to prepare the requested transcript in accordance with section 5576.

(4) The Board encourages the use of electronic means (e.g., facsimile, e-mail, etc.) for the filing of requests for transcripts. A request for a transcript may be filed electronically pursuant to this section if an electronic copy of such document is transmitted to the Board Proceedings Division in accordance with instructions provided on the Board's website at www.boe.ca.gov. Written requests for transcripts may also be hand delivered to the Board's headquarters at 450 N Street, in Sacramento, California, or mailed to the following address:

State Board of Equalization
Attn: Transcript Coordinator
Board Proceedings Division, MIC: 80
P. O. Box 942879
Sacramento, CA 94279-0081

(5) A transcript prepared pursuant to this section is a public record and subject to disclosure.

(6) Completed transcripts, untranscribed shorthand notes, and recordings are retained up to 12 years following the hearing date. Written requests for copies of previously completed transcripts should be sent to the address provided in paragraph (4) of this subdivision. The Board will charge a fee in accordance with section 5576 for copying a completed transcript.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: California Constitution, article XIII, section 11; Government Code sections 6254, 11124.1, 11125.1, 15606, 15619, 15640; Revenue and Taxation Code sections 251, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5573. WAIVER OF CONFIDENTIALITY.

Oral hearings are generally conducted during open session at public meetings held in accordance with Government Code sections 11120 and 11123.

(a) Appeals from Actions of the Franchise Tax Board. The filing of an appeal under chapter 4 constitutes a waiver of the appellant's right to confidentiality with regard to all of the information provided to the Board by the appellant or the Franchise Tax Board, including information contained in a hearing summary prepared under section 5444.

(b) Sales and Use Tax, Timber Yield Tax, and Special Taxes and Fees. The filing of a written request for an oral hearing before the Board under chapter 2 constitutes a waiver of the taxpayer's right to confidentiality with regard to information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's oral hearing before the Board or included in the hearing summary prepared for the taxpayer's oral hearing before the Board.

(c) Property Taxes.

(1) A taxpayer waives its right to confidentiality when the taxpayer:

(A) Files a petition described in section 5310, subdivision (a)(1), (3), or (4) of chapter 3, and submits a written request for an oral hearing before the Board; or

(B) Files an application described in section 5310, subdivision (a)(2) of chapter 3.

(2) The waiver described in paragraph (1) of this subdivision only applies to:

(A) The taxpayer's petition or application filed under chapter 3 of this division, and any documents filed in support of the petition or application;

(B) Any briefs filed in response to or in support of the taxpayer's petition or application, and any documents filed in support of such briefs;

(C) The hearing summary or summary decision prepared for the taxpayer's oral hearing before the Board; and

(D) Any other information provided to or obtained by the Board that is actually disclosed on the transcript of the taxpayer's oral hearing before the Board.

(d) Effective Date of Waiver.

(1) A waiver described in subdivision (b) or (c) of this section is effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's oral hearing to which the waiver applies.

(2) A waiver described in subdivision (b) or (c) may be rescinded by the taxpayer at any time before it becomes effective, if the taxpayer agrees to waive its oral hearing before the Board. At the time a taxpayer waives an oral hearing under this paragraph, the taxpayer may request that the Board decide the taxpayer's matter on the basis of the written record on file without an oral hearing or dismiss the taxpayer's matter.

(e) Exceptions.

(1) Protection from Identity Theft.

(A) The waivers described in subdivisions (a), (b), and (c) do not apply to any person's address, telephone number, social security number, federal identification number, or other account number, and such information will not be provided to the public in response to a request made pursuant to the California Public Records Act (Gov. Code, §§ 6250 et seq.).

(B) Nothing in this paragraph prohibits any party to a Board hearing, Board Members, or Board Staff from referring to information described in this paragraph in briefs filed under this division, or in a manner that will not disclose any person's actual address, telephone number, social security number, federal identification number, or bank account number at an oral hearing conducted during an open session at a public meeting.

(2) Closed Session. The waivers described in subdivisions (b) and (c) do not apply to:

(A) Information that is only discussed during a portion of an oral hearing conducted during a closed session held pursuant to Government Code section 11126, and the procedures contained in section 5574; and

(B) The portion of a hearing summary, if any, containing information that is only scheduled to be discussed during a closed session.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: California Constitution, article XIII, section 11; Government Code sections 6254, 11124.1, 11125.1, 15606, 15619, 15640; Revenue and Taxation Code sections 251, 743, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5574. REQUEST FOR PORTION OF ORAL HEARING CONDUCTED DURING CLOSED SESSION.

(a) Board's Discretion to Conduct Oral Hearings During Closed Session.

(1) In general, the Board may conduct portions of oral hearings requested under chapter 2 or chapter 3 of this division during a closed session held under Government Code section 11126.

(2) The Board may not conduct oral hearings requested under the following provisions during a closed session:

(A) Article 2 of chapter 3 of this division regarding the assessment of unitary or non-unitary property, or an electric generation facility as defined in Revenue and Taxation Code section 721.5.

(B) Chapter 4 of this division regarding appeals from the actions of the Franchise Tax Board.

(b) Contents of Requests. Taxpayers may request that the Board conduct a portion of an oral hearing requested under chapter 2 or chapter 3 during a closed session. Such a request must be in writing, specifically identify the matter for which the taxpayer's oral hearing was requested, and describe the trade secrets or other confidential research, development, or commercial information, which is likely to be presented at the taxpayer's oral hearing, the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression.

(c) Manner of Filing and Due Date for Requests. Requests described in subdivision (b) must be filed with the Chief of Board Proceedings in the manner provided in section 5570 no later than the due date of the Response to Notice of Board Hearing provided in section 5522.6.

(d) Review of Requests.

(1) Chief Counsel's Review and Recommendation. Upon receipt of a taxpayer's request for the Board to conduct a portion of an oral hearing during a closed session, the Chief Counsel will:

(A) Review the request to determine whether the matter involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person;

(B) Prepare a written recommendation to grant or deny the request; and

(C) Submit the taxpayer's request along with the recommendation to the Board Chair.

(2) Board Chair's Discretion. Upon receipt of a taxpayer's request under subdivision (b) and the Chief Counsel's recommendation to grant or deny the request, the Board Chair may direct the Chief of Board Proceedings to schedule the taxpayer's oral hearing so that a portion of the hearing is conducted during a closed session, if the Board Chair determines that:

(A) The matter involves trade secrets or other confidential research, development, or commercial information the disclosure of which would cause unwarranted annoyance, embarrassment, or oppression to any person; and

(B) Such information is likely to be disclosed if the taxpayer's oral hearing is conducted solely during an open session at a public meeting.

(3) If a portion of an oral hearing is scheduled to be conducted during a closed session pursuant to paragraph (2) of this subdivision, that portion of the oral hearing must proceed in closed session unless a majority of the quorum present during the closed session votes in favor of a motion to conduct the entire oral hearing during an open session.

(4) If a motion is passed in accordance with paragraph (3) of this subdivision, the taxpayer's oral hearing must be rescheduled so that the entire hearing can be conducted during an open session at a public meeting, and the Chief of Board Proceedings shall issue a new Notice of Board Hearing in accordance with section 5522.6.

(A) The waivers described in subdivision (b) or (c) of section 5573 are effective on the date the Board issues its first Public Agenda Notice providing public notice of the date and time of the taxpayer's rescheduled oral hearing.

(B) The waivers described in subdivision (b) or (c) of section 5573 may be rescinded by the taxpayer at any time before they become effective, if the taxpayer agrees to waive its oral hearing before the Board.

(e) Notice of Board Chair's Decision. The Chief of Board Proceedings must notify the taxpayer of the Board Chair's decision on a request to conduct a portion of an oral hearing during a closed session no later than five days prior to the issuance of the Public Agenda Notice described in section 5573, subdivision (d).

(f) Definitions. The phrase "trade secrets or other confidential research, development, or commercial information the disclosure of which will cause unwarranted annoyance, embarrassment, or oppression" must be interpreted in the same manner as the terms used therein are interpreted or defined for purposes of Code of Civil Procedure section 2031.060.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: California Constitution, article XIII, section 11; Government Code sections 6254, 11124.1, 11125.1, 15606, 15619, 15640; Revenue and Taxation Code sections 251, 743, 833, 1840, 7051, 7056, 8251, 8255, 9251, 9255, 11651, 11655, 13170, 19542, 19545, 30451, 30455, 32451, 32455, 38701, 38705, 38706, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601, 60609.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5575. PRIVILEGE.

The waivers provided for in section 5573 do not abrogate the Board's privileges with regard to memoranda from attorneys in the Board's Legal Department and the Attorney General to Board Members that are confidential communications between client and lawyer as defined in Evidence Code section 952.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Government Code section 6254; Evidence Code sections 952, 954.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

5576. FEES: FILING, TRANSCRIPTS, AND COPIES.

(a) The Board does not charge a fee for the filing of any paper or the issuance of a subpoena.

(b) Charges for transcripts of testimony heard before the Board shall be made at the rates specified in Government Code section 69950.

(c) Copies, including certified copies, of records that the Board is permitted by law to divulge will be furnished to taxpayers and other interested persons at cost as specified in Government Code section 6253 and Civil Code section 1798.33.

Note: Authority: California Constitution, article XIII, section 11; Government Code sections 15606, 15640; Revenue and Taxation Code sections 251, 1840, 7051, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301, 60601. Reference: Civil Code section 1798.33; Government Code section 15613.

History: 1. New section adopted 9-12-2007; effective 2-6-2008.

■ ■ ■

BOARD OF EQUALIZATION RULES FOR TAX APPEALS

California Code of Regulations
Title 18. Public Revenues
Division 2.1. State Board of Equalization – Rules for Tax Appeals
Chapter 6: Taxpayer Bill of Rights Reimbursement Claims

5600. DEFINITIONS, BOARD HEARING PROCEDURES; TAXES AFFECTED BY THIS ARTICLE.

(a) The definitions in sections 5511 and 5512 apply to this chapter, and Board hearings on claims filed under this chapter will be conducted under the hearing procedures set forth in chapter 5 of this division, commencing with section 5510, except as otherwise noted.

(b) This chapter applies to reimbursement claims under any of the following programs:

Corporate Franchise and Income Tax --

Personal Income and Bank and Corporation Income Tax
Revenue and Taxation Code Sections 18401-19802

Business and Property Taxes --

Alcoholic Beverage Tax
California Constitution Article XX, Section 22;
Revenue and Taxation Code Sections 32001-32557

California Tire Fee
Public Resources Code Sections 42860-42895;
Revenue and Taxation Code Sections 55001-55381

Childhood Lead Poisoning Prevention Fee
Health and Safety Code Section 105310;
Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax
California Constitution Article XIII B, Section 12;
Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax
Revenue and Taxation Code Sections 60001-60709

Emergency Telephone Users Surcharge
Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge
Revenue and Taxation Code Sections 40001-40216

Hazardous Substances Tax
Revenue and Taxation Code Sections 43001-43651

Integrated Waste Management Fee
Revenue and Taxation Code Sections 45001-45984

Marine Invasive Species Fee Collection Law
Public Resources Code Sections 71200-71271;
Revenue and Taxation Code Sections 44000-44008, 55001-55381

Motor Vehicle Fuel Taxes
California Constitution Article XIX, Sections 1-9;
Revenue and Taxation Code Sections 7301-8526

Natural Gas Surcharge
Public Utilities Code Sections 890-900;
Revenue and Taxation Code Sections 55001-55381

Occupational Lead Poisoning Prevention Fee
Health and Safety Code Section 105190;
Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention and Administration Fees
Revenue and Taxation Code Sections 46001-46751

Private Railroad Car Tax
California Constitution Article XIII, Section 19;
Revenue and Taxation Code Sections 11201-11702

Sales and Use Tax
(including State-administered local sales, transactions and use taxes)
Revenue and Taxation Code Sections 6001-7279.6

Timber Yield Tax
Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908

Underground Storage Tank Maintenance Fee
Revenue and Taxation Code Sections 50101-50162

Use Fuel Tax Law
Revenue and Taxation Code Sections 8601-9355

(c) To the extent that provisions in this chapter are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

Note: Authority: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New article 9 (sections 5090-5095) and section adopted 11-19-1997; effective 4-8-1998.
2. Amendment of subsection (b) 7-29-1999; effective 10-31-1999.
3. Amendment of subsection (b) and Note 3-8-2001; effective 7-6-2001.
4. Amendment of subsection (b) 7-26-2004; effective 8-25-2004.
5. Section renumbered (from section 5090), cross-references in subdivision (a) amended, "article" replaced with "chapter" in subdivisions (b) and (c), "regulations" replaced with "provisions" in subdivision (c), and note amended 9-12-2007; effective 2-6-2008.

5601. ELIGIBLE CLAIMS.

Only those expenses that were incurred after the date of the notice of determination, jeopardy determination or claim for refund in business or property tax cases and after the date of filing an appeal to the Board in corporate franchise and income tax cases are eligible for reimbursement. Expenses incurred in a business tax or Timber Yield Tax case are "related to a hearing before the board" and reimbursable only if the claimant sought Board review of an unfavorable Decision and Recommendation issued by the Appeals Division and only if the Board finds that the action taken by Board Staff was unreasonable. To determine whether Board Staff has been unreasonable, the Board will consider whether Board Staff has established that its position was substantially justified. This means that a taxpayer whose petition for redetermination or claim for refund is not granted does not have an eligible claim. All expenses incurred in corporate franchise or income tax appeals to the Board are "related to a hearing before the board."

Note: Authority: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-1997; effective 4-8-1998.
2. Amendment of section and Note 3-8-2001; effective 7-6-2001.
3. Amendment of section 5-25-2004; effective 8-25-2004.
4. Section renumbered (from section 5091), "shall" replaced with "will", and Note amended 9-12-2007; effective 2-6-2008.

5602. REASONABLE FEES.

Reasonable fees for professional representation before the Board shall be as provided in Revenue and Taxation Code section 7156, subdivision (c)(1)(B)(iii).

Note: Authority: Section 15606(a), Government Code; Section 893, Public Utilities Code Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 44003, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 7156, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-1997; effective 4-8-1998.
2. Change without regulatory effect amending Note filed 6-11-2001.
3. Section renumbered (from section 5092) and Note amended 9-12-2007; effective 2-6-2008.

5603. CLAIM PROCEDURE.

(a) Claim Form. The claim must be filed with the Chief of Board Proceedings on the Taxpayers' Bill of Rights Reimbursement Claim form (7/98), which is hereby incorporated by reference.

(b) One Year Filing Deadline; Complete Claim Form. The completed claim form must be filed within one year of the date the decision of the Board becomes final. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a completed claim form upon a showing of reasonable cause, if the written request is filed with the Chief of Board Proceedings prior to the scheduled due date of the claim form. If the claim form filed is incomplete, the claimant will be granted 30 days additional time to complete the claim form. Failure to file a complete claim within the time granted will result in dismissal of the claim by the Chief of Board Proceedings.

(c) Dismissal of Ineligible Claim. The Chief of Board Proceedings must dismiss a claim when the Board previously disposed of the case at hearing without granting the petition for redetermination or claim for refund.

(d) Staff Statement. Within 60 days of the filing of a complete claim form, Board Staff and, when applicable, Franchise Tax Board staff, must submit a statement in response to the claim. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a staff statement upon a showing of reasonable cause, if a written request is filed with the Chief of Board Proceedings before the scheduled due date of the staff statement.

(e) Claimant Response. The staff statement(s) must be mailed to the claimant, who must be given the opportunity to respond within 60 days of service of the staff statement with additional written argument and/or documentation, including, but not limited to, declarations under penalty of perjury. The Chief of Board Proceedings, in his or her discretion, may grant extensions of time to file a response upon a showing of reasonable cause if the written request for extension is filed with the Chief of Board Proceedings before the scheduled due date of the response. If the claimant submits new information or documentation in the response, Board Staff or Franchise Tax Board staff may be given an additional 30 days to respond to the new material.

Note: Authority: Section 15606(a), Government Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-1997; effective 4-8-1998.
2. Amendment of subsection (a) 7-29-1999; effective 10-31-1999.
3. Amendment of subsections (c) and (d), repealer of subsection (e) and amendment of Note 3-8-2001; effective 7-6-2001.
4. Amendment of section 5-25-2004; effective 8-25-2004.
5. Section renumbered (from section 5093), "shall" replaced with "must" throughout section, "good" replaced with "reasonable" in subdivisions (b), (d), and (e), "At the discretion of," "for the filing of," and "may be granted" deleted from subdivisions (b), (d), and (e), "to file" and "in his or her discretion, may grant" added to subdivisions (b), (d), and (e), and Note Amended 9-12-2007; effective 2-6-2008.

5604. ORAL HEARING ON REIMBURSEMENT CLAIM.

After the submission of documents described in section 5603, the claim will be scheduled for oral hearing before the Board. The claimant and, when applicable, the Franchise Tax Board will receive 60 days notice of the hearing date and time, and the procedures will be governed by chapter 5 of this division. Oral hearing may be waived by the taxpayer and the matter submitted for decision on the basis of the written submissions.

Note: Authority: Section 15606(a), Government Code; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-1997; effective 4-8-1998.
2. Amendment of section 7-29-1999; effective 10-31-1999.
3. Amendment of section and Note 3-8-2001; effective 7-6-2001.
4. Section renumbered (from section 5094), "as set forth" replaced with "described," "Regulation 5093" replaced with "section 5603," "shall" replaced with "will," "Article 7" replaced with "chapter 5 of this division," and Note amended 9-12-2007; effective 2-6-2008.

5605. NOTICE OF DECISION.

Whether or not an oral hearing is held on the claim, the Board will send written notice of its decision to the claimant, and, where applicable, to the Franchise Tax Board. Notwithstanding chapter 5 of this division, the Board's decision on the claim is final 30 days from the date it is mailed. Any proposed award of reimbursement must be available as a public record for at least 10 days prior to the effective date of the award, except appeals from actions of the Franchise Tax Board, which must be available as a public record for at least 10 days prior to the effective date of the determination.

Note: Authority: Section 15606(a), Government Code; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-1997; effective 4-8-1998.
2. Amendment of section and Note 3-8-2001; effective 7-6-2001.
3. Section renumbered (from section 5095), first "shall" replaced with "will," second and third "shall" replaced with "must," "the provisions of Article 7" replaced with "chapter 5 of this division," and Note amended 9-12-2007; effective 2-6-2008.

5700. ANNOTATIONS.

(a) Definitions. For purposes of this regulation, the following definitions shall apply:

(1) "Annotations" are published in either the Business Taxes Law Guide or the Property Taxes Law Guide and are summaries of the conclusions reached in selected legal rulings of counsel. Annotations do not embellish or interpret the legal rulings of counsel which they summarize and do not have the force and effect of law.

(2) "Legal ruling of counsel" means a legal opinion written and signed by the Chief Counsel or an attorney who is the Chief Counsel's designee, addressing a specific tax application inquiry from a taxpayer or taxpayer representative, a local government agency, or board staff.

(3) "Current Legal Digest" means a publication containing drafts of new annotations proposed to be added, and/or annotations proposed to be amended or deleted in the Business Taxes Law Guide or Property Taxes Law Guide.

(4) "Tax" means any tax, fee, surcharge, assessment, assessment review, or exemption program administered by the Board or any tax over which the Board has oversight or advisory responsibility.

(5) "Taxpayer" means person liable for the payment of any tax as the term tax is defined above.

(6) "Board" means the State Board of Equalization.

(b) Elements of Annotated Legal Rulings of Counsel. In order to qualify for annotation, a legal ruling of counsel must include the following elements:

- (1) A summary of pertinent facts,
- (2) An analysis of the issue(s),
- (3) References to any applicable statutes, regulations, or case law, and
- (4) A conclusion supported by the analysis of the issue(s).

(c) Use of Annotations.

(1) Annotations provide notice of the existence of and conclusions reached in selected legal rulings of counsel regarding the application of the statutory law, regulatory law, or judicial opinions to a particular factual circumstance.

(2) Annotations are a research tool to locate selected legal rulings of counsel and thus provide guidance regarding the interpretation of statutes and Board regulations as applied by the Board staff to specific factual situations in legal ruling of counsel.

(3) Except as provided in Regulation 1705, following the advice provided in an annotation is not reasonable reliance upon written advice for purposes of obtaining relief from a failure to pay tax, interest and penalty.

(d) Publication of Annotations.

(1) Before new annotations are added, or existing annotations are amended or deleted, the Board shall publish the proposed changes in a Current Legal Digest and shall provide interested persons not less than 30 days to comment on and, if necessary, challenge the proposed changes.

(2) Any person may request, and shall be entitled to receive, Current Legal Digests. Requests to be added to the mailing list to receive Current Legal Digests may be directed to the Board's Legal Division.

(e) Request for Depublication of an Annotation. An annotation published in the Business Taxes Law Guide or the Property Taxes Law Guide believed to be in error and/or appearing to conflict with another annotation may be depublished using the following procedure:

(1) A request for depublication of an annotation shall be directed to the Chief Counsel.

(2) A request for depublication of an annotation shall be approved or denied by the Chief Counsel within sixty (60) days from the date the request is received.

(3) If a request for the depublication of an annotation is approved by the Chief Counsel, the Board shall publish the proposed depublication in a Current Legal Digest.

(4) If a request for the depublication of an annotation is denied, the requestor may bring the request before the Board's Business Taxes or Property Taxes Committee for consideration.

(f) Copies of Legal Rulings of Counsel. Any person may request, and shall be entitled to receive, a copy of a legal ruling of counsel, with confidential taxpayer information excised, that has been annotated in the Business Taxes Law Guide or Property Taxes Law Guide. Requests may be directed to the Board's Legal Division.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 15606(c) and (e), Government Code; Sections 6596, 7051, 7084, 8262, 9262, 13170, 30458.2, 32462, 40202, 41162, 43513, 45858, 46613, 50156.2 and 55323, Revenue and Taxation Code.

History: 1. Adopted 5-6-2000; effective 7-27-2000.

2. Renumbering of section 5200 to new section 5700, including amendment of Note, 9-12-2007; effective 2-6-2008.

■ ■ ■